

BEFORE THE FEDERAL ELECTION COMMISSION
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In the Matter of

1099 L.C. d/b/a Venice Nissan Dodge

Donald M. Caldwell

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MUR 6054

SENSITIVE

RESPONDENTS' BRIEF

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May 4, 2010

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RESPONDENTS' BRIEF

On behalf of 1099 L.C. d/b/a Venice Nissan Dodge (VND) and Donald M. Caldwell (Caldwell), undersigned counsel submits this Respondents' Brief in response to the General Counsel's Brief recommending the Federal Election Commission (Commission) find probable cause to believe that VND and Caldwell violated the Federal Election Campaign Act of 1971, as amended (FECA). Respondents urge the Commission to reject the General Counsel's recommendation and find no probable cause to believe a violation of FECA occurred.

I. Summary

At issue is whether VND and Caldwell knowingly and willfully violated 2 U.S.C. § 441f (making contributions in the name of another) and 2 U.S.C. § 441a(a) (excessive partnership contributions) in connection with contributions to Vern Buchanan for Congress (VBFC). For the reasons stated below, the record in this matter does not support the General Counsel's probable cause recommendation.

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After an extensive 20 month investigation including at least 7 depositions, 554 pages of documents, and 1 phone interview, no compelling evidence has surfaced that supports the allegations contained in the complaint filed by Citizens for Responsibility and Ethics in Washington (CREW Complaint). Accordingly, this matter exists today essentially as it did when the complaint was filed – it hinges on the memory, interpretation, and truthfulness of a biased witness: Carlo A. Bell.

The facts of the case generally are not in dispute. VND paid cash bonuses to 5 employees on September 16, 2005; and those employees shortly thereafter contributed to VBFC. No one disputes the legality of VND paying bonuses to its employees. Likewise, no one disputes the legality of VND employees making contributions to VBFC. At issue is whether an impermissible connection existed between the bonuses and the contributions. Despite the Office of General Counsel's (OGC) extensive examination of VND's internal policies and payroll system, nothing has been discovered either in the documents or testimony that moves this matter beyond the realm of conflicting recollections as to what occurred. Not only is there no smoking gun, but the evidence fails to support even a finding of probable cause in this matter.

Without compelling and unambiguous evidence, the Commission must look to the statements of those involved to determine whether a violation occurred. The affidavits of 2 individuals formed the basis of the complaint – David J. Padilla and Mr. Bell. The fact that Mr. Padilla appears to have disappeared completely from this matter leads to the conclusion that OGC has rightfully determined he is not a credible witness. Mr. Bell's affidavit has now been directly contradicted

by the sworn statements and testimony of 8 individuals, and the lack of conclusive documentary evidence further diminishes the probative value of Bell's statements.

As OGC is aware, Respondents have made every effort to cooperate with this investigation. Each subpoena and order has been complied with in a timely manner. Not a single document has been withheld based on privilege or any other reason. No motions to quash or modify any subpoenas have been filed. Documents have been voluntarily provided that may have been outside the scope of the subpoenas. Respondents have been forthcoming and have acted in good faith in order to assist OGC in determining whether the allegations contained in the CREW Complaint are truthful.

Unfortunately, OGC appears to have started from the premise that Mr. Bell is to be believed, and has interpreted each piece of evidence in the manner most favorable to that initial flawed assumption. The General Counsel's Brief cites to Bell as though his truthfulness is beyond question while discounting the testimony of every other witness and misinterpreting the documentary evidence.

Even assuming (without conceding) that the allegations contained in the General Counsel's Brief are accurate, at worst the violations were minor and inadvertent. The dollar amount (\$5,000) and the number of individuals (8) involved are small. The \$1,000 contributions in question were well below the \$2,100 per candidate, per election or \$4,200 per cycle limit in 2005-2006. If a scheme existed to violate FECA, it was not an elaborate or ambitious one.

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This case was at its strongest the day CREW filed the complaint and has become progressively weaker during the course of the investigation as allegations are either directly refuted or not supported by the evidence. Limping towards a probable cause finding based solely on the statements of Mr. Bell does not further the mission of the Commission and does a great disservice to VND and Mr. Caldwell. Accordingly, the Commission should reject the General Counsel's recommendation and find no probable cause to believe a violation of FECA occurred in this matter.

II. Procedural Summary

This matter was initiated on August 19, 2008 by a complaint filed by CREW. Complaint at ¶ 1. On June 23, 2009, the Commission found reason to believe that VND and Caldwell knowingly and willfully violated 2 U.S.C. § 441f and 2 U.S.C. § 441a(a). On April 14, 2010, the General Counsel's Brief recommended the Commission find probable cause to believe that VND and Caldwell knowingly and willfully violated those provisions.

III. Statement of Facts

VND is a limited liability company (LLC) organized in the state of Florida.¹ VND has elected to be taxed as a partnership by the IRS in accordance with 26 C.F.R. § 301.7701-3. Shelby Curtsinger was the owner-operator at VND in 2005. Caldwell was the general manager at VND in 2005. Brad Combs and Padilla were finance managers at VND in 2005. Bell was the finance

¹ Under Florida state law, limited liability companies can use the abbreviation "L.C." in their name if it operated under that name prior to July 1, 2007; see Florida Stat. § 608.406(4)(2009).

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director at VND in 2005. William Mullins, Marvin White, Jack Prater, and Jason Martin were sales managers at VND in 2005. In September 2005, several VND employees contributed to VBFC (Committee ID: C00412759) including Curtsinger, Caldwell, Bell, Mullins, White, Prater, and Martin. Combs and Padilla did not contribute to VBFC in 2005.

As described in more detail below, VND's management and employees deny that conduit contributions were requested or made. Further, there are reasons to doubt the veracity of Mr. Bell.

IV. Response

The allegations contained in the General Counsel's Brief are not supported by the evidence. In fact, the only evidence provided to support the allegations are 2 potentially unreliable affidavits from Mr. Bell.² It is unclear what happened to the allegations made by Padilla.³ As is demonstrated below, Bell is the weak foundation upon which this case is built.

² Bell Aff. (August 12, 2008) and Supplemental Affidavit Bell Supp. Aff. (March 26, 2010).

³ Much like with Bell, the statements of the other star witness in the CREW Complaint, David Padilla, did not hold up under scrutiny. In April of 2008, in response to a question from Mark Douglas of News Channel 8 (WFLA) in Tampa, Florida, David Padilla stated on camera that he had never been asked to make a campaign contribution to Vern Buchanan for Congress:

Mark Douglas: "Another former Buchanan Finance Manager, DJ Padilla, also swears in an affidavit filed with the FEC that he was pressured to give on another such occasion and replied at the time: 'You have to be out of your mind.' But, last April, Padilla told us a different story."

Mark Douglas to DJ Padilla: "Were you ever asked to make political campaign contribution to Vern Buchanan?"

DJ Padilla: (Laughing) "No. I don't know if it was that I was, because a registered a Democrat or Independent or I don't remember what I registered as at that point, uh but anyhow, I had heard that went on."

A. General Counsel's Brief Relies Almost Exclusively on Carlo Bell

The General Counsel's Brief repeatedly uses Mr. Bell's statements to support the conclusion that a violation of FECA occurred. Bell is cited 26 times in the General Counsel's Brief – an average of more than once per page. In addition to serving as the primary source of evidence for OGC, Bell's testimony appears to have been given disproportionately more weight than other witnesses. Bell's recollections are described as "clear" while the recollections of every other witness is discounted.⁴ Bell is cited as an expert on the internal policies and practices of VND, even when contradicted by Curtsinger, the owner-operator of the business, and Caldwell, its General Manager. Bell is even cited for his expertise on campaign finance law in order to support the

The interview was submitted earlier to the record as Exhibits E¹ and E². However, in David Padilla's August 19, 2008 affidavit, he states that he was asked to make a contribution to Vern Buchanan for Congress in September of 2005. See Padilla Aff. at ¶ 3. In addition, OGC asked Jack Prater about Padilla's truthfulness:

Mr. Gould. During that time period, did Mr. Padilla ever lie to you?

Jack Prater. I'm sure.

Q. Can you give me an instance where he lied to you?

A. No, I can't give you an instance, but I know he lied quite a bit.

Q. How do you know that?

A. Because I dealt with several customer situations that he lied to customers.

Q. What did he lie to customers about?

A. Well, I don't remember exact, sir. I just remember he had a few different times where he would embellish things with customers or tell them things that weren't quite accurate and I could have to go in and correct the situation...

Prater Dep. at 42.

⁴ See, e.g., General Counsel's Brief at 7-8, In the Matter of 1099 L.C. d/b/a Venice Nissan Dodge, Donald M. Caldwell, MUR 6054 (F.E.C. Apr. 15, 2010) ("Moreover, Bell had a clear recollection of the meeting and Caldwell's payment as a reimbursement rather than a bonus, while the other contributors and Caldwell do not recall the bonuses except as something they assume took place.").

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contention that the violation was knowing and willful.⁵ As is discussed below, Bell is not a reliable source of information.

Without Bell, the General Counsel's Brief is reduced to highlighting minor differences among recollections of events that took place over 5 years ago, perceived inconsistencies in the VND payroll system, and a VND business envelope.⁶ These are meager facts with which to pursue a finding of a knowing and willful FECA violation.

B. Carlo Bell is Not a Reliable Witness

The allegations contained in the Brief are based almost exclusively on the recollections and interpretations of Mr. Bell regarding conversations that took place almost 5 years ago. There is strong evidence that Bell's recollections and interpretations are not accurate.

For example, Bell alleges in his affidavit that fellow VND employees Martin, Mullins, Prater, and White were reimbursed in 2005 for contributions to VBFC. See Bell Aff. ¶¶ 5-6, 8. However, these allegations are directly contradicted by sworn statements by Curtsinger, Caldwell, Combs, Martin, Mullins, Prater, and White.⁷

⁵ Caldwell's "disregard for Bell's questioning the legality of the reimbursement" is cited as evidence that the alleged violation was knowing and willful. General Counsel's Brief, *supra* note 4, at 19.

⁶ It is not clear why this envelope is mentioned in the General Counsel's Brief. The envelope appears to be evidence of "best efforts" by VBFC to obtain the required employer information in order to comply with 11 C.F.R. § 104.3(a)(4).

⁷ In addition, OGC asked Marvin White about Bell's truthfulness:

Q. What about Carlo Bell? Do you think Carlo Bell is an honest person?

A. Do I think he tells the truth all the time? No.

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In addition, there is independent evidence that Bell is not a credible witness. On multiple employment applications and his resume, Bell stated that he attended Florida State University. However, there is no record of Bell ever attending Florida State University. See Exhibit A. In addition, when asked about this discrepancy under oath during a deposition for a civil trial,⁸ Bell conceded that he had lied about attending Florida State University:

Q. Let me show you what has been marked as Exhibit 7 [Bell Resume] and ask you if you recognize that document?

Bell: Yes.

Q. Did you prepare that document?

Bell: Yes.

Q. Does that document say that you went to Florida State University?

Bell: Yes.

Q. Is that a lie?

Bell: Yes.

.....

Q. Let me show you what has been marked as Exhibit 6, which I will tell you is your application for the Hendricks Group. Does that application say you got a four-year degree —

Bell: Yes.

Q. Is that a lie?

Bell: Yes.

White Dep. at 34.

⁸ Bell Dep. 156-57 (Aug. 15, 2009) (in connection with Case No. 2008-CA-012207-NC), attached hereto as Exhibit B.

.....

Q. Why did you put on there that you went to Florida State University, if you had not?

A. Just, to be honest with you, because I thought it looked good.

C. Carlo Bell is Suing VND and Caldwell

Mr. Bell's credibility is similarly damaged by the fact that he filed a lawsuit against VND on July 31, 2008.⁹ It has been reported that the lawsuit was filed only after a \$43 million settlement offer from Bell was rejected earlier in July of 2008.¹⁰ Mr. Bell's personal stake in this lawsuit provides further motivation for him to fabricate his testimony in this matter.

D. Respondents Did Not Make Contributions in the Name of Another Person

Title 2, Section 441f of the United States Code prohibits the making of a contribution in the name of another person. Mr. Curtsinger denies all the allegations contained in the General Counsel's Brief on behalf of VND. Mr. Caldwell denies all the allegations contained in the General Counsel's Brief that pertain to him. The sworn statements and testimony from Curtsinger and Caldwell clearly state that they did not reimburse or compensate or attempt to reimburse or compensate anyone for campaign contributions to VBFC. The sworn statements and testimony from Mullins, White, Prater, and Martin clearly state that they were not

⁹ *Carlo Bell v. Vern Buchanan et al.*, No. 2008-CA-012207-NC (Fla. Cir. Ct. filed July 31, 2008).

¹⁰ "In July, Buchanan's lawyers rejected a \$43 million settlement offer from two former finance directors, Carlo Bell at Venice Nissan Dodge and Joe D. Kezer at Sarasota Ford." Suits target Buchanan's businesses, Sarasota Herald-Tribune, Aug. 24, 2008 available at

<http://www.heraldtribune.com/article/20080824/ARTICLE/808240349?p=3&tc=pg> (last accessed Apr. 29, 2010).

reimbursed or compensated for campaign contributions to VBFC. In other words, Bell is the only source that supports the allegations contained in the General Counsel's Brief.

In addition to the sworn statements and testimony of Messrs. Curtsinger, Caldwell, Combs, Mullins, White, Prater, and Martin to the contrary, no documents have been discovered that support the OGC's position. The one arguable exception is a \$5,000 check on September 16, 2005, attached as Exhibit C. This disbursement was technically paid to "Cash," so it was possibly outside the scope of the subpoena. However, Respondents provided copies of the check in the interest of full disclosure. As Mr. Caldwell's hand-written notes indicate, this cash was used to pay a "fast start" bonus distributed by Mr. Caldwell to Bell, Mullins, White, Prater, and Martin. Other than the timing of these bonuses as they relate to the Bell allegations, there is nothing unusual about the transaction. These bonuses were paid in the normal course of business and the fast start bonus paid on September 16, 2005 was no different than bonuses paid before and after that date. If anything, the fact the transaction was documented internally, and was disclosed to the Commission demonstrates there has been no attempt to hide the transaction by VND or Mr. Caldwell.¹¹

E. Caldwell's Testimony is Supported by Martin, Mullins, Prater, and White

The General Counsel's Brief goes to great lengths to point out minor inconsistencies in the testimony regarding recollections of events that took place over 5 years ago and then portrays these inconsistencies as proof that Bell's allegations are accurate. Nothing contained in the

¹¹ The transaction was documented using the VND accounting system and Mr. Caldwell's hand-written notes indicate the purpose and recipients of the Fast Start Bonus. See Exhibit C.

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statements of Martin, Mullins, Prater, or White contradicts Mr. Caldwell's statements – but they all contradict Bell's statements. Although the General Counsel's Brief challenges every detail of Caldwell's testimony, 4 others directly support Caldwell's recollection of events. *See* White Dep. at 57 (... "He [Caldwell] basically said he was going to donate to Vern Buchanan and asked us if we'd be willing to donate our Fast Start Bonus, if we wanted to donate – if we didn't feel comfortable with donating or couldn't afford it, don't donate it"); Prater Dep. at 36 ("I remember Don came into my office and mentioned something about Vern running for Congress and so on and so forth...I'm a Republican and I certainly wanted to give to Vern's campaign. So yes, I did. I donated \$1000."); Martin Dep. at 37 ("[H]e [Caldwell] said we are all going to get these bonuses. And this was the time that Vern was campaigning...but he mentioned that, you know, he thought it would be a good idea if we wanted to donate to his campaign. And he thought it was a good idea and that's how it was brought up."); Mullins Dep. at 27-28 ("...saw several of the managers go into an office, I followed them into the office asking them what was going on. They said they were donating money to Mr. Buchanan's campaign. I said, well, how much? And I wrote a check for \$1,000."). The outlier in this regard is Mr. Bell.

One point of confusion is the meaning of the hand-writing on the September \$5,000 check to cash. *See* Exhibit C. In an effort to be responsive to the Commission, Mr. Caldwell wrote the names of the 5 bonus recipients on the document. Mr. Caldwell explained the hand-writing was his and the reasons why he wrote on the document. As OGC is aware, Exhibit C is a print out of an electronic record, not a copy of a hard document. It is unclear why the General Counsel's

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Brief questions Caldwell's account about the handwriting on the bottom of the record.¹² For the reference of the Commission, 2 copies of this check are provided – one with Caldwell's handwriting (Exhibit C) and one "clean" copy (Exhibit D).¹³ For all the discussion of this document in the General Counsel's Brief, it is unclear why this is relevant. The hand-writing was an effort to be forthright during the Commission's investigation and OGC has instead tried to portray the document as a smoking gun. In reality, nothing could be further from the truth.

¹² The confusion surrounding this document was increased when OGC provided a version of this document that had been altered by OGC during Shelby Curtsinger's deposition. Exhibit 5 included handwriting that was not Don Caldwell's, but was represented to be Caldwell's by OGC:

Mr. Gould. Have you ever seen this document before?

Mr. Curtsinger. No.

Q. Do you recognize whose writing it is on the bottom of that page?

A. No. It looks like two different people's –

Q. Okay. Well, I'll –

A. – writing, one on one side and one on the other, but I don't recognize either one of them.

Q. I'll represent to you that Don Caldwell testified that it is his writing and that he created this document to help the Federal Election Commission understand the purpose of Check No. 205491.

.....

A. ...But you're saying Don said that he created the writing at the bottom?

Q. That's what he testified.

Curtsinger Dep. at 51-53. After Mr. Curtsinger's deposition was reopened to address this issue, when asked whether this inadvertent mistake affected his March 10th testimony, Mr. Curtsinger testified:

A. Well, it sort of threw me for a loop, because this was early in the deposition, I was looking at something that I'd never seen, we'd never discussed. I was trying to figure out who other's handwriting it could be, because he's telling me it's Don and Don testified to it, but it's two different handwritings. You could clearly see that they were totally different.

So the whole time while I'm giving testimony, I kept going back to the fact I was a little confused and concerned about who could have had access to the records, or where this document came from...And, yes, it did affect my mind-set at that state.

Curtsinger Supp. Dep. at 11.

¹³ Exhibit D was faxed to Counsel on September 9, 2009, prior to the submission of Exhibit C on September 21, 2009.

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OGC also confuses the difference between the criteria for the September 16, 2005 bonuses and the recipients and amounts of the bonuses. Since VND must accurately record all compensation for tax and other business purposes, and because the allegations in this matter had been widely reported in the press prior to the CREW Complaint being filed with the Commission, it is reasonable that the bonus amounts and recipients would be ascertainable after some due diligence by Mr. Caldwell. The General Counsel's Brief implies there was something unusual or improper with the fact that Mr. Caldwell did not maintain a record of the bonus criteria for the September 16, 2005 fast start bonuses.¹⁴ However, since there is no VND policy or IRS or FECA requirement to record bonus criteria, and since sales managers at VND are paid exclusively by bonus or commission, it also is reasonable and understandable that the bonus criteria may not be ascertainable by Caldwell. As Caldwell testified, he recorded the bonus criteria for a given month on his desk calendar. After the month was over, he would dispose of the calendar page for that month.¹⁵ This was Caldwell's practice each and every month, not just September 2005. It is important to keep in mind that the CREW complaint was filed almost three years after the September 2005 fast start bonuses were paid. During 2005, Beli, Martin, Mullins, Prater, and White would have collectively received at least 120 bonuses if each employee was paid an average of 2 bonuses a month for all 12 months during 2005. For OGC to expect Mr. Caldwell

¹⁴ "[F]ailure to keep any records of the purported bonus criteria" is cited as support for a knowing and willful violation of 441f. See General Counsel's Brief, *supra* note 4, at 19.

¹⁵ When asked about his procedure for handing out bonuses back in 2005, Caldwell testified:

A. ...[I]f I figure out a bonus that I would want to write down and I discuss it with the people, I write it on my desk blotter. Yes, I would throw it away with my calendar.

Q. That's whenever you were done with that calendar?

A. With that month, yes. You know what a desk blotter is? You pull it off month by month. One of those.

Caldwell Dep. at 31; see also *id.* at 49 ("When you said did I have something in writing about the bonus at that time in September, I would have written it on my desk calendar like we always have, but that would have been thrown away when the next month would have started.").

or anyone else to remember the precise bonus criteria for a single bonus is unreasonable, as is OGC's conclusion that being unable to remember the precise bonus criteria amounts to probable cause to believe that VND and Caldwell violated campaign finance laws.

OGC invested an enormous amount of time and effort into deposing VND employees. Almost 14 hours and 487 pages of testimony was taken. However, in the end, aside from some minor inconsistencies in recollection of events that took place almost 5 years ago, the investigation uncovered no probative testimonial evidence to support Bell's allegations.

F. VND Records are Inconclusive

Despite the hours of testimony in this case discussing the VND payroll and accounting systems, OGC's brief demonstrates a lack of understanding as to how these systems operate. OGC focuses on a few inconsistencies in the payroll and accounting system and presents them as proof of Bell's allegations. This is incorrect, at best.

The General Counsel's Brief highlights the descriptions used for checks made out to cash. Most of the accounting records indicate these checks will be used to pay bonuses or "spiffs." The accounting records associated with the September 16, 2005 \$5,000 check indicates the denomination of the bills, but not that the check was for the purpose of paying bonuses. The General Counsel's Brief cites this as proof the check did not represent a legitimate bonus. While it is impossible to know why the description was different for this particular check, one reasonable explanation is that an accounting department employee other than Tina Hires handled

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the check request and did not follow the practice of describing the check as a bonus check. The check record clearly indicates that, an employee with the initials "TW" prepared the check at the request of "TH" – presumably Tina Hires. Exhibit E. Perhaps TW was not aware of the bonus or spiff description protocol. Whatever the explanation, this accounting record is dispositive of nothing.

General Counsel's Brief also focuses on VND's payroll check logs, mistakenly taking an exception to be the rule. A payroll record for Jack Prater (JP 043) is cited as an example of a \$1,000 cash bonus being properly recorded for payroll and tax purposes. What OGC fails to mention is the remainder of Curtsinger's deposition testimony regarding VND's payroll practices during the examination of another Prater payroll record:

Q. Okay. I'd like to move on to Page JP 053. And this is the grand totals for the period –for the period beginning January 1, 2005 and ending December 31, 2005. Again, I'd like to draw your attention in the section of grand totals and the line which has miscellaneous incomes. The document that I have that was provided by your attorney shows an entry for M/E sales bonus, \$1000.

A. Okay. I see it.

Q. Do you have any reason to believe that Venice Nissan Dodge's accounting office was wrong?

A. Yes.

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Q. Why?

A. Because Mr. Prater, if you look at his total earnings for the year was \$148,062.24. His month-end sales bonuses for that year – and I'm going to have to think for a second – hold on. Give me one second. His draw, his weekly draw was about – let me look at one of these prior ones. Hold on one second. JP – his monthly draw is 1384. So his monthly draw was approximately \$1384 a week, which if you multiply that out – I don't know what times 52 that would be. What's 1384.62 times 52?

MR. DeLACY: 1384 –

THE WITNESS: Point – 1384.62 times 52.

MR. SOVONICK: \$72,000.24

THE WITNESS: Okay. So his monthly draw checks of 13 – weekly draw checks of 1384.62 was based on a \$72,000 a year draw. So anything over and above that, monthly sales bonuses, commissions, all would have been the difference between the 148,000 and the 72,000. So to think that he only got \$1,000 a month in sales bonuses, that looks like the girl made – did that one time and it was never done that way again. Because I know month-end sales bonuses, during that year, Jack would have had to have received 40 to 50,000, not 1,000. So, yes, I believe she was incorrect. Was it a bonus? Yes. Was it always put in that line? Never was, other than that one time, it looks like, on Jack Prater. And unless you got other ones -- documents from Marvin White, it looks like it was done one time for

Marvin White during a different month, which was November. This month was May.

Curtsinger Dep. at 42-44. Curtsinger went on to explain that the example cited on page 16 of the General Counsel's Brief is a deviation from VND policy and is actually the exception and not the rule:

BY MR. DeLACY:

Q. Mr. Curtsinger, I just -- we spent a lot of time talking about the separate -- whether bonuses or commissions are broken out separately in the payroll records of Venice Nissan Dodge, and I wanted to just clarify what the overall policy of Venice Nissan Dodge is. Is it the policy to break out bonuses and commissions separately or --

A. No. I'm sorry. I didn't let you finish.

Q. And so if it was not the policy, we went through a few examples where it actually was broken out separately, how do you account for that? Do you have any idea why that happened?

A. A different person doing payroll that didn't do it all the time. I mean, because, like I said, stated, their bonuses were way more than one time in a month over a

12-month period. I mean, they received bonuses -- '05 was one of our record years, and I would guesstimate that every manager hit some kind of a bonus every single month of one level or another. And in some -- in most cases, when you see that my Dodge manager made almost \$150,000, I would venture to say that a sizeable portion of that was month-end bonuses.

Q. Right. And so in a case where we have \$1,000 bonus for the entire year, is that an accurate reflection of the bonuses or commissions paid to a sales manager?

A. No.

Id. at 94-95.

The record therefore demonstrates that VND's practice is not to separately document bonuses, despite OGC's contrary assertions. See General Counsel's Brief at 16-17. Even a cursory review of the VND payroll documents will reveal that bonuses for sales managers were not routinely broken out as OGC asserts. See VND 004-032, 104-121, 124-144, 160-179, 182-206, 223-247. In fact, sales managers at VND were compensated entirely based on commission and bonuses. This is a customary practice in the industry as a letter from the Florida Automobile Dealers Association demonstrates, attached hereto as Exhibit F. VND sales managers did not receive a salary -- only a draw or advance on an anticipated payment of commission and bonuses. Accordingly, it is not logical to itemize bonuses when essentially all VND sales manager compensation was either a commission or a bonus.

OGC was provided unlimited access to VND payroll and accounting records, which it then used to question VND employees at length. OGC even requested personal bank account information and this information was voluntarily provided. However, in the end, aside from some minor inconsistencies, the investigation uncovered no probative documentary evidence.

G. Finance Directors, Like Bell, Are Paid Fast Start Bonuses, and Bell Received Cash Bonuses

Contrary to the General Counsel's Brief, Mr. Bell was eligible for Fast Start bonuses at VND. While VND finance department managers were not eligible for Fast Start bonuses, Bell, as director of the finance department, was eligible for Fast Start bonuses. See Curtsinger Supp. Aff. ¶ 3, attached hereto as Exhibit G. Bell's statement in his supplemental affidavit and Mr. Combs' statement¹⁶ on page 10 are correct – finance department managers are generally not eligible for Fast Start bonuses. However, Bell was a finance department director and as such was eligible for Fast Start and other bonuses. Although OGC uses the terms manager and director interchangeably (see, e.g., Office of General Counsel Brief, at 10), in reality the terms do not have the same meaning. In addition, Bell received cash bonuses on several occasions. See Curtsinger Supp. Aff. ¶ 6.

¹⁶ Combs was not deposed and no transcript of his statement is available for Respondents to review. Without any documentation, it appears that OGC is citing to memory regarding the Combs interview. Several requests for documentation supporting Combs' statement were denied.

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H. Respondents Did Not Make Excessive Contributions

Title 2, Section 441a(a) of the United States Code limits the amount a person may contribute to federal candidates. Without any credible evidence corroborating Bell's allegations regarding the 441f violation, the related 441a(a) violation is also not supported. It is worth noting, however, that as a partnership, VND could have made \$4,200 in partnership contributions to VBFC during the 2006 election cycle under 441a(a). Accordingly, any excessive contribution would total \$800. However, there is no evidence VND made any campaign contributions during the 2006 election cycle, let alone any excessive contributions.

I. Venice Nissan Dodge and Don Caldwell Could Not Have Knowingly and Willfully Violated Federal Campaign Finance Law

Even assuming that Mr. Bell's allegations are true – and they are not – there is no evidence that such a violation was committed knowingly and willfully. No one at VND, including Caldwell, was actively involved in politics or political fundraising or had any knowledge of campaign finance law during 2005. Aside from Bell's allegations, there is no evidence Caldwell or anyone at VND knew that reimbursing for campaign contributions was illegal.¹⁷ Instead of producing actual evidence of a knowing and willful violation, the General Counsel's Brief merely recites the same tired and misleading arguments regarding the VND payroll and accounting system while ignoring the sworn statements of 8 individuals. The specific OGC arguments are discussed in more detail below.

¹⁷ As OGC points out, at least one federal court is unclear on this issue. See *U.S.A. v. O'Donnell*, Case No. 09-50296 (C.D. Cal. July 24, 2008).

J. General Counsel's Brief Does Not Support a Knowing and Willful Violation of 441f

The General Counsel's Brief states that a finding of a knowing and willful violation of 441f on the part of VND and Caldwell is appropriate for 4 reasons. The first is "Caldwell's disregard for Bell's questioning the legality of the reimbursement." There is no independent evidence the exchange actually happened, and there is no reason Caldwell should be required to take legal advice from Bell. The second reason cited is "respondents' failure to keep any records of the purported bonuses criteria, amounts, and recipients." As is discussed above, there is no VND policy or IRS or FECA requirement to keep records of bonus criteria. The third reason cited is Respondents' "failure to include the purported bonuses in the payroll records of the purported recipients of the bonuses." As is discussed above, all bonuses at VND are included in the payroll records of the recipients of the bonuses. As is also explained above, the bonuses are, as a general rule, not separately itemized. The fourth reason cited is "the lack of evidence supporting the respondents' assertion that the cash paid to Messrs. Bell, Martin, Prater, Mullins, and White was a legitimate bonus." This seems to be an odd assertion given the testimony of Caldwell, Martin, Prater, Mullins, and White all affirmatively stating the bonus was legitimate and the decided lack of documentary evidence to the contrary.

Accordingly, Respondents urge the Commission to reject the General Counsel's recommendation and find no probable cause to believe a knowing and willful violation of 441f occurred.

K. General Counsel's Brief Does Not Support a Knowing and Willful Violation of 441a(a)

The General Counsel's Brief states that a finding of a knowing and willful violation of 441a(a) on the part of VND is appropriate for 2 reasons. The first is that VND "deliberately disguised its excessive contributions because it was aware the Act prohibited a contribution in that amount." The second reason cited is that VND was aware of contribution limits that applied to individuals.

1.) VND Records Do Not Show Evidence of Disguised Contributions.

As evidence of deliberately disguising excessive contributions, OGC cites several issues, mostly related to VND payroll and accounting system. The first reason cited is "VND's accounting records for the \$5,000 check not indicating its purpose." However, VND's accounting records clearly indicate the purpose of the check is "cash," and Mr. Caldwell's notations on the relevant documents clearly indicate the 5 recipients of \$1,000 cash each. The second reason cited is "the unsupported claim that the \$5,000 was used for Fast Start Bonuses, even to a manager who is not eligible for Fast Start Bonuses." Despite OGC's assertions, the fact that the \$5,000 was used for Fast Start Bonuses is supported by the testimony of Caldwell, Martin, Prater, Mullins, and White. As is discussed above, Bell was a director and as such was eligible for Fast Start Bonuses. The third reason cited is "the VND payroll records also not reflecting that the managers in question received \$1,000 cash bonuses." As is discussed above, all bonuses at VND are included in the payroll records of the recipients of the bonuses and the bonuses are not separately itemized as a general rule.

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2.) Individual Contributions are Not Evidence of Knowledge Regarding Partnership Contribution Limits.

As evidence that VND was aware of contribution limits that applied to individuals, the General Counsel's Brief cites Commission contribution records. It is unclear to Respondents how listing personal contributions demonstrates knowledge of partnership contribution limits, and it is inconceivable that anyone at VND would be aware of the contribution limit for LLCs that elect to pay taxes as a partnership.¹⁸ This is an arcane aspect of campaign finance law and not something an ordinary campaign contributor would have reason to understand.

Accordingly, Respondents urge the Commission to reject the General Counsel's recommendation and find no probable cause to believe a knowing and willful violation of 441a(a) occurred.

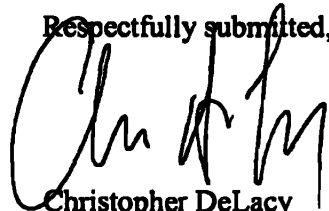
V. Conclusion

After a very thorough 20 month investigation, OGC is left with nothing but the questionable testimony of a biased former employee to support its recommendation that the Commission find probable cause to believe knowing and willful violations of campaign finance law occurred. This matter involves activities that took place almost 5 years ago and the investigation has uncovered no direct evidence to support the allegations contained in the General Counsel's Brief. At best, the General Counsel's conclusions are based on weak circumstantial evidence surrounding the bonuses paid on September 16, 2005. Individuals at Venice Nissan Dodge were

¹⁸ Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,399 (July 12, 1999).

engaging in protected First Amendment activity when they involved themselves with the Buchanan campaign. Respondents have already devoted considerable time and expense to responding to these allegations. It is very likely this investigation will deter at least some of the individuals involved from participating in the political process in the future. Based on the foregoing, Respondents respectfully request the Commission reject the General Counsel's recommendation and find no probable cause to believe violations of FECA occurred in this matter.

Respectfully submitted,



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May 4, 2010

Condensed Transcript

**IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

CARLO BELL, Individually,

Plaintiff,

-vs-

CASE NO.

2008-CA-012207-NC

**VERN BUCHANAN, SHELBY CURTSINGER,
DON CALDWELL, 1099 LC d/b/a VENICE
DODGE NISSAN, BUCHANAN AUTOMOTIVE
HOLDINGS, INC.,**

Defendants.

DEPOSITION OF

CARLO BELL

VOLUME I OF II

**August 15, 2009
10:08 a.m.**

**1819 Main Street, Suite 250
Sarasota, Florida**

Reported by: GERRILYNN MEHL, RPR



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1

IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CASE NO. 2008-CA-012207-MC

CARLO BELL, Individually,
Plaintiff,
-vs-
VERN BUCHANAN, SHELBY CURTSINGER,
DON CALDWELL, 1099 LC d/b/a VENICE
DODGE NISSAN, BUCHANAN AUTOMOTIVE
HOLDINGS, INC.,

Defendants.

-----/

DEPOSITION OF CARLO BELL

VOLUME I OF II
(Pages 1 through 168)

Saturday, August 15, 2009
10:08 a.m. - 4:22 p.m.

Esquire Deposition Solutions
1819 Main Street
Suite 250
Sarasota, Florida

Reported by:
GERRILYNN MEHL, RPR
Notary Public, State of Florida
Esquire Deposition Services - Tampa, Florida
813-221-2575 (800-838-2814)
Job No. 116559Bell.Carlo081509

3

EXHIBITS

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10 174 Warning Notice 8/18/08

2

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ALSO PRESENT:
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DONALD CALDWELL
JOHN TOSCH

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The deposition taken before GERRILYNN MEHL,
Registered Professional Reporter and Notary Public
in and for the State of Florida at Large in the
above cause.

COURT REPORTER: Do you swear or
affirm that the testimony you are about to
give will be the truth, the whole truth,
and nothing but the truth?

THE WITNESS: Yes.

CARLO BELL, having been first duly sworn or
affirmed, was examined and testified as follows:

EXAMINATION

BY MR. ORNSTEIN:

Q Please state your name.
A Carlo Bell, B-e-l-l.
Q And what is your present residential
address?
A _____, Sarasota
34231.

Q Who do you live there with?
A My wife.
Q And what is her name?
A Elizabeth.
Q What is your cell phone number?



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<p style="text-align: center;">5</p> <p>1 A [redacted].</p> <p>2 Q And what is your home number?</p> <p>3 A [redacted]</p> <p>4 Q And where are you presently employed?</p> <p>5 A I'm not, I'm a student.</p> <p>6 Q I'm going to be asking you a series of</p> <p>7 questions today. If there is at any point in time</p> <p>8 where I ask you a question that you don't</p> <p>9 understand, would you please point that out to me?</p> <p>10 A Yes.</p> <p>11 Q And if you don't point it out to me, I'm</p> <p>12 going to assume that you understood the question;</p> <p>13 okay?</p> <p>14 A Okay.</p> <p>15 Q Are you under any medication today that</p> <p>16 would make these questions hard for you to answer?</p> <p>17 A No.</p> <p>18 Q As I understand your complaint, you began</p> <p>19 working at Venice Dodge Nissan, December 14, 2001?</p> <p>20 A Yes.</p> <p>21 Q What position were you hired for?</p> <p>22 A Lead F&I finance director.</p> <p>23 Q As a finance director in 2001 what were</p> <p>24 your duties?</p> <p>25 A Supervising the finance department,</p>	<p style="text-align: center;">7</p> <p>1 MR. ORNSTEIN: Yes, I can.</p> <p>2 MR. LYONS: Your voice is breaking</p> <p>3 up. I hear Carlo clear as a bell, no pun</p> <p>4 intended. I don't know if it's the cell</p> <p>5 phone or the speaker there. Maybe if you</p> <p>6 could get closer to it because for some</p> <p>7 reason your voice is breaking up and</p> <p>8 Carlo's isn't.</p> <p>9 MR. ORNSTEIN: Well, I'm going to sit</p> <p>10 where I'm comfortable, so, and I think I'm</p> <p>11 talking in a normal voice.</p> <p>12 MR. LYONS: You're not breaking up</p> <p>13 now. I don't know what you did different</p> <p>14 but I can hear you fine now.</p> <p>15 BY MR. ORNSTEIN:</p> <p>16 Q Mr. Bell, have you been able to hear my</p> <p>17 questions?</p> <p>18 A Yes, but I'm not on the telephone.</p> <p>19 Q Would you send information to banks?</p> <p>20 A Yes.</p> <p>21 Q What type of information would you send to</p> <p>22 banks?</p> <p>23 A Credit applications.</p> <p>24 Q Would you send credit applications only</p> <p>25 for the deals you were working on or would you</p>
<p style="text-align: center;">6</p> <p>1 running reports. That's it mainly. Doing deals.</p> <p>2 I was more of a lead finance than a director</p> <p>3 because I did deals as well. I did 40 or 50 deals</p> <p>4 a month.</p> <p>5 Q So if I understand your testimony, you had</p> <p>6 a supervisory role; correct?</p> <p>7 A Yes.</p> <p>8 Q But you were also spinning deals as well?</p> <p>9 A Yes.</p> <p>10 Q And when you weren't doing your own deal,</p> <p>11 were you reviewing the deals of the other members</p> <p>12 of the F&I department?</p> <p>13 A Yes, some.</p> <p>14 Q Did you have the responsibility for</p> <p>15 reviewing deals done by other F&I personnel?</p> <p>16 A As a rule, no. If there was an issue with</p> <p>17 a deal, like if they couldn't get the deal</p> <p>18 approved, then I would jump in.</p> <p>19 Q Did you have any interaction with banks?</p> <p>20 A Yes.</p> <p>21 Q And did you submit paperwork to banks?</p> <p>22 A Yes.</p> <p>23 MR. LYONS: Mark, your voice is</p> <p>24 breaking up terribly. Mark, can you hear</p> <p>25 me?</p>	<p style="text-align: center;">8</p> <p>1 send credit applications for transactions that</p> <p>2 others were working on?</p> <p>3 A Primarily mine.</p> <p>4 Q Explain to me what the dealer track system</p> <p>5 is.</p> <p>6 A It's an electronic medium to send credit</p> <p>7 applications to the bank. It's internet based.</p> <p>8 Q I'm going to try really hard not to ever</p> <p>9 talk over you, so I'll just try to wait a second.</p> <p>10 A Okay.</p> <p>11 Q Who would input information into the</p> <p>12 dealer track system?</p> <p>13 A Each given F&I manager.</p> <p>14 Q Is it a fact that somebody from the sales</p> <p>15 department, at least when you were employed at</p> <p>16 Venice, had a pass code for the dealer track</p> <p>17 system?</p> <p>18 A Yes.</p> <p>19 MR. LYONS: Object to the form of the</p> <p>20 question.</p> <p>21 BY MR. ORNSTEIN:</p> <p>22 Q So nobody from the sales department had a</p> <p>23 pass code for the dealer track system, to the best</p> <p>24 of your knowledge?</p> <p>25 A The sales department in whole, no, that's</p>



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<p style="text-align: center;">9</p> <p>1 not correct. Jason Martin when he was on the 2 sales desk had access, he has a password. And Jon 3 Scarborough did when he was on the Dodge sales 4 desk. 5 Q And when was Joe Scarborough there? 6 A From when I started until I don't remember 7 exactly when he went to Avon Park. Maybe late 8 2004. I don't remember exactly. 9 Q Your complaint says as director of F&I you 10 were in charge in a supervisory capacity of 11 arranging loans; true? 12 A Oh-huh, yes. 13 Q You were in charge of preparing paperwork; 14 true? 15 A Yes. 16 Q You were in charge of coordinating all 17 paperwork to facilitate title work; true? 18 A On the deals that I did, yes. There were 19 hundreds of deals every month that I didn't do 20 that I never saw the title work. 21 Q Well, how many deals per month did you 22 not -- did you do the title work for? 23 MR. LYONS: Hang on for just one 24 second. I'm going to pass the police 25 officer and ask the police officer what</p>	<p style="text-align: center;">11</p> <p>1 Q And your complaint says that you're 2 responsible for seeing that all F&I department 3 paperwork was done correctly and in compliance 4 with the applicable rules, laws, and procedures. 5 What did you mean by that statement in 6 your complaint? 7 A That I was ultimately responsible for 8 those things. 9 Q And what kind of training did you provide 10 the folks at F&I regarding compliance? 11 A Did I personally provide them? 12 Q Yes. 13 A None specifically. 14 Q Now, if I understand, I guess I looked 15 through some of your employment records, you had 16 been to JM&A school? 17 A Yes. 18 Q Did you graduate from JM&A school? 19 A Yes. 20 Q Did they talk about compliance at JM&A 21 school? 22 A A little bit. It's probably 10 percent of 23 the entire school of the week long school. 24 Q Did you pay attention during that portion? 25 A Yes.</p>
<p style="text-align: center;">10</p> <p>1 the story is with the electricity in the 2 building. 3 [Brief recess was taken.] 4 BY MR. ORNSTEIN: 5 Q So if the complaint says that you were in 6 charge of coordinating all paperwork to facilitate 7 title work, that's not a true statement; correct? 8 A I mean, I was ultimately responsible for 9 it. If there was a problem with the title work, 10 it probably came to me first if I was available. 11 If I wasn't there we go to whichever finance 12 manager did that deal. 13 Q Were you ultimately responsible for the 14 entire F&I department? 15 A Yes. 16 Q Your complaint says that you were in 17 charge of processing loan paperwork; true? 18 A Yes. 19 Q And you were responsible for the funding 20 of bank contracts and sale of finance and 21 insurance; correct? 22 A Yes. 23 Q And you were in charge of compliance 24 issues as well; correct? 25 A Yes.</p>	<p style="text-align: center;">12</p> <p>1 Q In 2007 -- and I guess just for the 2 record, you left what date in 2007 from Venice 3 Dodge Nissan? 4 A March, it was either 23rd or 24th. I 5 think it was the 24th of March. 6 Q Your complaint says the 24th, 2007. I 7 keep saying Dodge and Nissan. Did you work for 8 one store or the other or both? 9 A Both. As far as managers go, finance 10 managers, they did both Nissan and Dodge and used 11 cars. 12 Q And you were the finance director; 13 correct? 14 A Yes. 15 Q In 2007 what illegal acts did you complain 16 about to either Mr. Caldwell or Mr. Cutsinger? 17 A The last one that I recall is the day that 18 I left. 19 Q What was that? 20 A It was a box close. 21 Q What is a box close? 22 A Do you know what a box close is? 23 Q No. 24 A A box close is basically when a sales 25 manager gives a customer a payment that they know</p>



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<p style="text-align: center;">13</p> <p>1 isn't going to happen, that they know they can't</p> <p>2 get to, and then they put the customer into the</p> <p>3 finance office to the hopes that the finance</p> <p>4 manager can get them from what they were told to</p> <p>5 what the payment is actually going to be.</p> <p>6 Basically they lie to the customer and</p> <p>7 tell them what they want to hear and then they put</p> <p>8 them into the finance office and hope the finance</p> <p>9 manager can move them from what they were told to</p> <p>10 what the payment would be.</p> <p>11 Q If I understand your testimony, then, it</p> <p>12 was that the salesman or a sales manager gave a</p> <p>13 customer a payment that wasn't obtainable?</p> <p>14 A Yes.</p> <p>15 Q What was the name of that customer?</p> <p>16 A I don't remember.</p> <p>17 Q Was this on March 24th?</p> <p>18 A Yes.</p> <p>19 Q Did that customer ultimately purchase a</p> <p>20 vehicle?</p> <p>21 A Not the day that I was there that I'm</p> <p>22 aware of. Maybe they did later, I don't know.</p> <p>23 Q What time on March 24th did you leave?</p> <p>24 A The exact time I don't remember. It was</p> <p>25 probably early afternoon. I don't remember the</p>	<p style="text-align: center;">15</p> <p>1 A Um, I don't remember.</p> <p>2 Q What about at Douglas Jeep?</p> <p>3 A I had a conversation with the office</p> <p>4 manager. I wasn't written up for it, I didn't</p> <p>5 sign it. I guess she wrote something up but I</p> <p>6 wasn't aware that she wrote it up.</p> <p>7 Q What other illegal acts -- I'm sorry; with</p> <p>8 regard to the box close did you complain to</p> <p>9 Mr. Curtsinger?</p> <p>10 A No.</p> <p>11 Q What other illegal or wrongful acts did</p> <p>12 you complain to Mr. Caldwell --</p> <p>13 A Actually, I take that back. I might have</p> <p>14 had a conversation with Shelby, now that I think</p> <p>15 about it, after the fact, after I left the store.</p> <p>16 Shelby and I had a conversation and I told him</p> <p>17 what happened.</p> <p>18 Q Is that when you asked for your job back?</p> <p>19 A No, I never asked for my job back.</p> <p>20 Q You never asked for your job back?</p> <p>21 A No.</p> <p>22 Q What other illegal acts did you complain</p> <p>23 to either Mr. Caldwell or Mr. Curtsinger in 2007?</p> <p>24 A I don't remember specifically. I was only</p> <p>25 there for two-and-a-half months. That's the one</p>
<p style="text-align: center;">14</p> <p>1 exact hour.</p> <p>2 Q And who did you complain to?</p> <p>3 A Don Caldwell.</p> <p>4 Q And what did you say to Don and what did</p> <p>5 Don say to you?</p> <p>6 A I told him it was a box close. And he</p> <p>7 said the customer was angry with me because I was</p> <p>8 rude to them. In actuality the customer was lied</p> <p>9 to and I had to give the customer the payments,</p> <p>10 what they were actually going to be, which was</p> <p>11 higher than what they were told at the sales desk.</p> <p>12 Q This is the transaction that you got</p> <p>13 reprimanded for?</p> <p>14 A Yes.</p> <p>15 Q What did Mr. Caldwell say to you?</p> <p>16 A I just told you what he said. He said the</p> <p>17 customer was angry with me, I was rude to the</p> <p>18 customer, I was hard on the customer. When</p> <p>19 actually all I was trying to do was get the</p> <p>20 customer to agree to a payment that was higher</p> <p>21 than what they were told.</p> <p>22 Q Were you rude to the customer?</p> <p>23 A No.</p> <p>24 Q Have you ever been reprimanded before or</p> <p>25 after for being rude to customers or employees?</p>	<p style="text-align: center;">15</p> <p>1 that comes to mind is the one that I left over,</p> <p>2 the last one the day that I left.</p> <p>3 Q So as you sit here today you cannot</p> <p>4 remember any other instances in 2007 that you</p> <p>5 complained to Mr. Caldwell or Mr. Curtsinger; is</p> <p>6 that a fair statement?</p> <p>7 A Yes.</p> <p>8 Q Is there anything that you could look at</p> <p>9 that would refresh your recollection?</p> <p>10 A As far as what? What do you mean?</p> <p>11 Q As far as instances in 2007 that would</p> <p>12 refresh your recollection as to whether or not you</p> <p>13 complained to Mr. Caldwell or Mr. Curtsinger in</p> <p>14 2007 with regards to illegal acts or alleged</p> <p>15 illegal acts at Venice Dodge Nissan.</p> <p>16 A When you say things I could look at, I</p> <p>17 don't understand that question.</p> <p>18 Q Is there a file you could look at, is</p> <p>19 there a picture you could look at?</p> <p>20 A I'm sure there are deals that I could look</p> <p>21 at.</p> <p>22 Q And what deals would you be looking for?</p> <p>23 A I don't know. When we get the deals I'll</p> <p>24 let you know.</p> <p>25 Q Is there a name of a customer?</p>



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<p style="text-align: center;">17</p> <p>1 A Specifically, no.</p> <p>2 Q Okay. In 2008 what wrongful or illegal --</p> <p>3 what allegedly wrongful or illegal acts did you</p> <p>4 complain to either Mr. Cutsinger or Mr. Caldwell?</p> <p>5 A A variety of them.</p> <p>6 Q And those would be what?</p> <p>7 A Those would be forging invoices.</p> <p>8 Q What else?</p> <p>9 A Power booking used cars.</p> <p>10 Q What else?</p> <p>11 A Probably Scott Martin, Marvin White's</p> <p>12 father-in-law.</p> <p>13 Q What about Scott Martin?</p> <p>14 A He is the one that they went to to doctor</p> <p>15 pay stubs, proof of residence.</p> <p>16 Q Where was Scott Martin when this occurred?</p> <p>17 A I don't know. He left, I don't know</p> <p>18 exactly when he left. He was employed there for a</p> <p>19 year-and-a-half or so. I don't know exactly how</p> <p>20 long he was employed there. But then he left and</p> <p>21 went to a used car dealer somewhere near Venice</p> <p>22 Dodge Nissan, and then he was subsequently</p> <p>23 arrested for doctoring pay stubs online to banks</p> <p>24 and sending them false information.</p> <p>25 Q Are any of these pay stubs, pay stubs that</p>	<p style="text-align: center;">19</p> <p>1 I think it was Wells Fargo -- and told the bank</p> <p>2 that the vehicle was new when it was actually</p> <p>3 used.</p> <p>4 Q Okay. Any other acts?</p> <p>5 A I can't think of any right now.</p> <p>6 Q So we have got forged invoice --</p> <p>7 A Uh-huh.</p> <p>8 Q -- correct? You have to say correct.</p> <p>9 A I'm sorry; yes.</p> <p>10 Q Power booking; correct?</p> <p>11 A Yes.</p> <p>12 Q And that would be on what, new or used</p> <p>13 cars?</p> <p>14 A Used.</p> <p>15 Q Scott Martin; correct?</p> <p>16 A Yes.</p> <p>17 Q And an instance that may have been '05 or</p> <p>18 '06 with Jason Martin?</p> <p>19 A Correct.</p> <p>20 Q Any others that you can remember as we sit</p> <p>21 here now?</p> <p>22 A As we sit here right now, no, I think</p> <p>23 that's it. If I remember any others, though, I'll</p> <p>24 bring them to your attention.</p> <p>25 Q Please.</p>
<p style="text-align: center;">18</p> <p>1 you provided to banks?</p> <p>2 A That I provided to banks? No, I think</p> <p>3 they were primarily mostly secondary deals. He</p> <p>4 was a secondary salesman.</p> <p>5 Q Did you not do any secondary deals when</p> <p>6 you were at Venice?</p> <p>7 A Very few. We had a secondary finance</p> <p>8 manager, Marty Roth, and then Brad Combs.</p> <p>9 Q You told me about forged invoices -- and</p> <p>10 we're still talking about 2006 -- power booking,</p> <p>11 and Scott Martin.</p> <p>12 Anything else?</p> <p>13 A I don't remember if it was '05 or '06 but</p> <p>14 I remember having a conversation with Den about</p> <p>15 his nephew, Jason Martin, who leased -- correct</p> <p>16 that. He purchased a vehicle -- no, he did lease</p> <p>17 it actually; sorry. He leased a mini van, a</p> <p>18 Nissan mini van, that was actually a used vehicle</p> <p>19 that he told the bank was a new vehicle.</p> <p>20 It was a van that we had sold new. The</p> <p>21 customers brought it back a month or two later, I</p> <p>22 don't remember exactly how long they had the</p> <p>23 vehicle. It had very few miles on it. Jason</p> <p>24 Martin subsequently leased it with Wells Fargo --</p> <p>25 if I'm not mistaken. I could be mistaken on that.</p>	<p style="text-align: center;">20</p> <p>1 With regards to forged documents, based on</p> <p>2 your testimony so far you didn't tell me about</p> <p>3 that occurring in 2007. Did you not complain</p> <p>4 about that in 2007?</p> <p>5 A I might have. I don't remember</p> <p>6 specifically.</p> <p>7 Q But you don't have any specific</p> <p>8 recollection of that; correct?</p> <p>9 A Correct.</p> <p>10 Q And I take it from your testimony that you</p> <p>11 don't have any specific recollection of</p> <p>12 complaining about power booking in 2007 either;</p> <p>13 correct?</p> <p>14 A As I sit here right now, I don't remember.</p> <p>15 Q If I understand your testimony correctly,</p> <p>16 you don't recall complaining about Scott Martin in</p> <p>17 2007; correct?</p> <p>18 A As I sit here right now, I don't remember.</p> <p>19 Q And as you sit here today you don't</p> <p>20 believe that you complained about Jason Martin and</p> <p>21 any vehicle he may or may not have purchased in</p> <p>22 2007; correct?</p> <p>23 A No, correct.</p> <p>24 Q What do you mean when you say forged</p> <p>25 invoices?</p>



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<p style="text-align: center;">21</p> <p>1 A A doctored invoice. A customer is upside 2 down in their limbs, as an example, and they don't 3 have any money down. Joe Scarborough and Jason 4 Martin would take invoices, factory invoices on 5 new vehicles, and raise the invoices so that a 6 deal would be in line, the loan to value would be 7 in line. 8 MR. ORNSTEIN: Would you read that 9 back to me, please. 10 [Record read as requested.] 11 BY MR. ORNSTEIN: 12 Q So they would change the invoice to show a 13 greater value? 14 A Yes. 15 Q And that would be on a new car? 16 A Yes. 17 Q And how would they do that? What would 18 they have to change in the invoice to do that? 19 A The dollar amount of the invoice, the 20 factory invoice. 21 MR. LYONS: Martin, let me interrupt 22 for a second. It looks like they may have 23 the power restored. I'll go back in my 24 office, get out of the hot seat and I'll 25 hopefully be able to call you guys back.</p>	<p style="text-align: center;">23</p> <p>1 Q And, if I understand, you didn't ask 2 anybody at Venice Dodge for your job back? 3 A Correct. 4 Q You didn't ask Shelby Cutsinger for your 5 job back? 6 A I had a conversation with Shelby 7 Cutsinger when I first left. 8 Q What was that conversation? 9 A The conversation about the deal and being 10 written up by Don. 11 Q Okay. Did you have a conversation with 12 Brad Combs asking for your job back? 13 A Why would I ask Brad Combs for my job 14 back? 15 MR. ORNSTEIN: Would you read him 16 back the question. 17 [Record read as requested.] 18 A No. 19 BY MR. ORNSTEIN: 20 Q Did you have a conversation with Jason 21 Martin about getting your job back? 22 A No. 23 Q Did you have a conversation with Jack 24 Prater (phonetic) about getting your job back? 25 A No.</p>
<p style="text-align: center;">22</p> <p>1 I'll take the number with me. If I can 2 call you, I'll call you. If I can't, I'll 3 come back. It will be about 5 minutes. 4 [Brief recess was taken.] 5 BY MR. ORNSTEIN: 6 Q When you alleged that Scott Martin 7 doctored pay stubs, was Scott Martin employed at 8 Venice Dodge at the time? 9 A When I made the allegation? 10 Q When you state that employees were taking 11 documents to Scott Martin to alter or to create, 12 was he an employee of Venice Dodge? 13 A Both. He was an employee -- he did it 14 before he worked there, while he worked there, and 15 after he worked there. 16 Q Okay. And when did he work there? 17 A I don't know what dates he worked there. 18 He was there for about a year-and-a-half. I can't 19 tell you the exact dates. 20 Q Was he there in 2004? 21 A I don't know, I don't remember the exact 22 dates he worked there. 23 Q And he got terminated when he was employed 24 there, correct? 25 A That I don't know either.</p>	<p style="text-align: center;">24</p> <p>1 Q Six months after you left Venice Dodge, 2 did you come back and ask for your job back again? 3 A No. 4 Q If I understand your testimony today, you 5 never asked for your job back, correct? 6 A Correct. 7 Q On the invoices that you alleged were 8 forged in 2006, what was changed on the invoice? 9 A The dollar amount of the invoice. 10 Q The -- 11 A The cost. 12 Q -- bottom line number? 13 A Bottom line and the top number. 14 Q And how much would they alter that number? 15 A It would depend on the deal. 16 Q And who did that? 17 A Jason Martin and Joe Scarborough. 18 Q Was Joe Scarborough even there in 2006? 19 A No, he was doing it when he worked there 20 for the two or three years that he and I were 21 there together at the same time. 22 Q Okay. I'm asking about 2006. 23 A Jason Martin. 24 Q Okay. So it was just Jason Martin? 25 A Yes, as far as I know.</p>



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<p style="text-align: center;">25</p> <p>1 Q And I would ask that you let me finish my 2 question before you answer, is that okay? 3 A Sure. 4 Q Okay. Was Jason Martin the only person 5 that you know that allegedly forged invoices? 6 A Yes. For the whole time I was there or in 7 2006? 8 Q 2006. 9 A Yes. 10 Q And about how many times are you aware did 11 Jason Martin do that? 12 A In 2006 or altogether? 13 Q In 2006. 14 A To give you a specific number, I couldn't 15 give you. It was 10 or 12 times, if not more. 16 Q And how did you become aware that he was 17 doing this? 18 A He told me he was. 19 Q And when did he tell you that? 20 A Probably 2004 or 2005. 21 Q Did he tell you he was doing it in 2006? 22 A Yes. 23 Q I'm trying to figure out how, if they were 24 secondary deals, that you did not work on -- 25 A These were primary deals.</p>	<p style="text-align: center;">27</p> <p>1 A I think as far as the invoices go it was 2 primarily Don. I don't think I ever had a 3 conversation with Shelby about it. I don't think 4 I did. 5 Q Did you have a conversation with Vern 6 Buchanan about it? 7 A No. 8 Q Did you send any kind of a written 9 document to Vern Buchanan about it? 10 A No. 11 Q Did you send any kind of documentation 12 about it to John Tosch? 13 A No. 14 Q Did you tell Steve Heidtman (phonetic)? 15 A No. 16 Q Did you tell Ed Schmidt? 17 A No. 18 Q Do you know who Steve Heidtman is? 19 A Yes. 20 Q Do you know who Ed Schmidt is? 21 A No. I know he works for Buchanan 22 Automotive but I don't know what his job is. 23 Q Did you tell anybody from the Buchanan 24 Automotive Group? 25 A No.</p>
<p style="text-align: center;">26</p> <p>1 Q These were primary deals? 2 A Yeah. 3 Q Were these deals that you were the F&I 4 person on? 5 A No, these were deals that Jason was the 6 finance manager on or Brad. Those two primarily. 7 Q And was Brad in F&I? 8 A Yes. 9 Q And they were under your supervision? 10 A Yes. 11 Q And on at least 10 or 12 primary deals 12 you're aware of Jason Martin forging invoices; 13 correct? 14 A Yes. 15 Q And were those invoices sent to banks? 16 A Yes. 17 Q Did you ever call those banks and advise 18 them they were in possession of false invoices? 19 A No. I told him (pointing.) 20 Q You're pointing. 21 A Don Caldwell. 22 Q Did you ever do a written report to 23 anybody? 24 A No. 25 Q Other than Don Caldwell who did you tell?</p>	<p style="text-align: center;">28</p> <p>1 Q Do you know the names of the customers in 2 which the invoices were used? 3 A Off the top of my head, no. 4 Q Do you know who the salespeople were on 5 those transactions? 6 A Not off the top of my head, no, I don't 7 recall. 8 Q When you told Don Caldwell about forged 9 invoices in 2006, what did Don Caldwell say to 10 you? 11 A Don't get caught doing it, basically. He 12 condoned it. 13 Q Well, did he tell you not to get caught 14 doing it? 15 A He meant for the department specifically. 16 He knew his nephew was doing it. I told him about 17 it, he said just do it correctly. I'm 18 paraphrasing. The point was, do it right so you 19 don't get caught. 20 Q Did he ask you to do it? 21 A No. 22 Q And if I understand your testimony, you 23 did not do it? 24 A Correct. 25 Q And his comment with regards to you was</p>



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<p style="text-align: center;">29</p> <p>1 don't get caught, paraphrasing?</p> <p>2 A Yes.</p> <p>3 Q Did he reprimand you?</p> <p>4 A For doctoring invoices?</p> <p>5 Q For telling him about doctored invoices?</p> <p>6 A Did he reprimand me? I don't quite</p> <p>7 understand the question. What --</p> <p>8 Q When you brought up the fact that there</p> <p>9 were allegedly invoices being doctored, did he</p> <p>10 reprimand you?</p> <p>11 A I'm sure he wasn't happy about it. I</p> <p>12 don't understand your question. If you're asking</p> <p>13 me if he was happy about it or not happy about it,</p> <p>14 he wasn't happy about it to hear that I knew about it</p> <p>15 and I was telling him about. He wasn't happy</p> <p>16 that I knew about it, in other words.</p> <p>17 Q Did he threaten you in any way?</p> <p>18 A Threaten me? No.</p> <p>19 Q You had a pay plan when you worked at</p> <p>20 Venice Dodge; correct?</p> <p>21 A Venice Nissan Dodge, yes.</p> <p>22 Q And you were paid off the profits of the</p> <p>23 entire department; correct?</p> <p>24 A Yes.</p> <p>25 Q And in those instances where you alleged</p>	<p style="text-align: center;">31</p> <p>1 made you aware of it?</p> <p>2 A From who?</p> <p>3 Q From anybody.</p> <p>4 A Marvin White.</p> <p>5 Q What would Marvin White say?</p> <p>6 A I had to power book this car to get the</p> <p>7 loan to value in line.</p> <p>8 Q How would Marvin White know that the loan</p> <p>9 to value was not in line?</p> <p>10 A Because he has NADA books, he has guides</p> <p>11 to tell him the value of the car, and he knows</p> <p>12 what the customer is going to be borrowing and you</p> <p>13 divide one by the other and it gives you the loan</p> <p>14 to value.</p> <p>15 Q But he didn't have any contact directly</p> <p>16 with the banks; correct?</p> <p>17 A No.</p> <p>18 Q Who actually had most of the contact with</p> <p>19 the banks?</p> <p>20 A The finance managers.</p> <p>21 Q And did you have more contact with the</p> <p>22 banks than the other finance managers?</p> <p>23 A Maybe a little bit. It was probably about</p> <p>24 even, but maybe a little bit more.</p> <p>25 Q Are you aware of presenting any</p>
<p style="text-align: center;">30</p> <p>1 doctored invoices were used, you profited by that;</p> <p>2 correct?</p> <p>3 A I was paid on the deal, yes.</p> <p>4 Q In 2006 how many times are you aware of</p> <p>5 that power booking occurred with regards to used</p> <p>6 cars?</p> <p>7 A Hundreds.</p> <p>8 Q Who did the power booking?</p> <p>9 A Primarily Marvin White.</p> <p>10 Q What was Marvin White's title.</p> <p>11 A Car manager.</p> <p>12 Q Did you work on any deals in F&I where</p> <p>13 power booking had occurred?</p> <p>14 A Probably. If I did, I wasn't aware of it.</p> <p>15 Q Are you personally aware of hundreds of</p> <p>16 deals being power booked?</p> <p>17 A I know that it happened hundreds of times,</p> <p>18 if that's what you're asking.</p> <p>19 Q How did you know it happened hundreds of</p> <p>20 times in 2006?</p> <p>21 A Because it was common knowledge.</p> <p>22 Q Tell me --</p> <p>23 A The salesman knew about it, the managers</p> <p>24 knew, everybody knew about it.</p> <p>25 Q And what is it that was said to you that</p>	<p style="text-align: center;">32</p> <p>1 information where you presented information to the</p> <p>2 bank on a power booked deal?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q Are you aware with personal knowledge as</p> <p>5 to what F&I managers presented power booked deals</p> <p>6 to a bank?</p> <p>7 A Primarily Jason and Brad.</p> <p>8 Q Wasn't Mr. Padilla (phonetic) -- so if I</p> <p>9 understand, Mr. Padilla didn't do this?</p> <p>10 A I don't know. He might have. If he did,</p> <p>11 he wouldn't have done it knowingly or willingly.</p> <p>12 Q Why do you say that?</p> <p>13 A Because that's not how he does business.</p> <p>14 Q How many times can you remember having a</p> <p>15 conversation with Marvin White regarding power</p> <p>16 booked deals?</p> <p>17 A Lots of times.</p> <p>18 Q And you told me one statement with regards</p> <p>19 to loan to value; correct?</p> <p>20 A Yes.</p> <p>21 Q What other statements would he make to</p> <p>22 you?</p> <p>23 A That would be it. That's why he would do</p> <p>24 it, he would say this car has been power booked</p> <p>25 or --</p>



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1 Q So hundreds of times -- I'm sorry; are you
2 done?
3 A Yes, I'm done.
4 Q So hundreds of times in 2006 Marvin White
5 told you that I have power booked a deal?
6 A Told me, no, not specifically, not
7 hundreds of times. There were plenty of times but
8 not hundreds.
9 Q Okay. How many times did Marvin White
10 tell you that he power booked a deal?
11 A In 2006?
12 Q In 2006.
13 A I don't know. Twenty, thirty, forty. I
14 honestly don't have a number. A lot --
15 Q Twenty to forty?
16 A -- is the answer.
17 Yes.
18 Q Do you do a written report to anybody that
19 Marvin White was power booking deals?
20 A No.
21 Q Did you tell Mr. Buchanan --
22 A No.
23 Q -- that Mr. Marvin White was power booking
24 deals?
25 A No.

34

1 Q Did you tell Mr. Curtsinger that Marvin
2 White was power booking deals?
3 A Probably not.
4 Q Did you tell Mr. Caldwell that Marvin
5 White was power booking deals?
6 A Yes.
7 Q And what did Mr. Caldwell say to you?
8 Let me ask you this: What exactly did you
9 say to Mr. Caldwell about Marvin White power
10 booking deals?
11 A That it wasn't necessary and that he was
12 doing it.
13 Q And what did Mr. Caldwell say to you?
14 A He said basically -- and, again, I'm
15 paraphrasing -- just do whatever it takes to get
16 the deal done.
17 Q Did he reprimand you for telling him that
18 Marvin White had power booked deals?
19 A Did he reprimand me for telling him?
20 Again, he probably wasn't happy to hear it.
21 Q Did he reprimand you?
22 A I don't know what that means, reprimand.
23 Did he write me up? No. Did he yell at me? He
24 might have. I don't remember specifically. He
25 didn't write me up.

35

1 Q And he didn't yell at you in such a way
2 that you remember it today?
3 A He yelled at me so many times, I can't
4 remember specifically any one individual time.
5 Q He yelled at you a lot?
6 A Commonly.
7 Q Was he mean to you?
8 A Yeah. He was very condescending, uh-huh.
9 Q Did you not like Mr. Caldwell?
10 A I don't have anything against him
11 personally. I don't agree with his business
12 tactics.
13 Q Mr. Caldwell's?
14 A Yes.
15 Q Did you advise Mr. Tosch that power
16 booking was going on?
17 A No.
18 Q Did you advise anybody from Buchanan
19 Enterprises or any corporate person that you were
20 aware of any power booking?
21 A No.
22 Q Just so the record is clear, what is power
23 booking?
24 A Power booking, again, is raising the value
25 of cars -- this deals with used cars -- raising

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1 the value of a car to get the loan to value in
2 line. In other words, if a car is worth \$10,000
3 and the customer needs to borrow 15,000, that's
4 150 percent, you would raise the value of the used
5 car to get the loan to value in line closer to 120
6 or 125 percent.
7 Q Your complaint says that 20 to 30 percent
8 of the transactions at Venice Dodge Nissan was
9 power booked?
10 A It's probably more than that. But, yeah,
11 that's a conservative number.
12 Q And it says in your complaint that the
13 equipment on the vehicle was inflated as much as 1
14 to \$2,000?
15 A Yes.
16 Q What accessories --
17 A Or more.
18 Q Or more?
19 A Uh-huh.
20 Q What accessories would you add to a
21 vehicle to increase the value 1 to \$2,000 or even
22 more?
23 A Sunroofs, stereos, wheels, leather. Any
24 option on the car that the car doesn't have you
25 can add to it if it's in the book.



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<p style="text-align: center;">37</p> <p>1 Q And by book --</p> <p>2 A Different trim levels.</p> <p>3 Q And what accessory or trim level would</p> <p>4 take a vehicle that was sold used on the Venice</p> <p>5 Dodge Nissan lot that would increase the value of</p> <p>6 the vehicle by \$2,000?</p> <p>7 A What trim level?</p> <p>8 Q Yes.</p> <p>9 A Just the trim level alone. I mean, as an</p> <p>10 example, if it was a Nissan and it was an SE, you</p> <p>11 can say it was an LE.</p> <p>12 Q And that would increase the value by</p> <p>13 \$2,000 on the used value?</p> <p>14 A No, I don't think it would increase it</p> <p>15 \$2,000, but that would be one of the things that</p> <p>16 would be done in addition to adding equipment.</p> <p>17 Like sunroofs and aluminum wheels, leather.</p> <p>18 Q So there wasn't one accessory, if I</p> <p>19 understand your testimony correctly, that would</p> <p>20 raise the value of a vehicle by \$2,000; correct?</p> <p>21 A There could be trim levels. I don't think</p> <p>22 of one off the top of my head, but there could be</p> <p>23 one specific item that would be worth \$2,000. A</p> <p>24 diesel, for example, if it was a regular gasoline</p> <p>25 engine and you said it was a diesel, that would be</p>	<p style="text-align: center;">39</p> <p>1 or more?</p> <p>2 A Dodge truck, any truck.</p> <p>3 Q Dodge truck doesn't tell me anything.</p> <p>4 A Okay.</p> <p>5 Q What would you have to do to power book a</p> <p>6 Dodge truck to increase the value of the vehicle</p> <p>7 by \$2,000?</p> <p>8 A Say that it had options on it that it</p> <p>9 didn't have.</p> <p>10 Q What options?</p> <p>11 A I just went over those with you. Sunroof,</p> <p>12 leather, stereo, wheels, different engines.</p> <p>13 Q So do you think that reporting a sunroof</p> <p>14 to a bank on a vehicle that didn't have a sunroof</p> <p>15 would increase the value of the vehicle by \$2,000?</p> <p>16 A In the bank's eyes, yes, they would make a</p> <p>17 decision based on the value they were given.</p> <p>18 Q What does the bank rely upon --</p> <p>19 A The information coming from the dealer.</p> <p>20 Q You got to let me finish.</p> <p>21 A Okay.</p> <p>22 Q When the bank gets information from the</p> <p>23 dealership, let's call it Venice Dodge Nissan, do</p> <p>24 they look at any guide to assess the value of that</p> <p>25 vehicle?</p>
<p style="text-align: center;">38</p> <p>1 worth \$2,000.</p> <p>2 Q If a vehicle had a diesel engine, would</p> <p>3 that not show up in the VIN number of the vehicle?</p> <p>4 A Probably.</p> <p>5 Q At banks that you worked with in 2006, do</p> <p>6 you know if they ran VIN numbers through VIN</p> <p>7 decoders to see what equipment would be on a</p> <p>8 vehicle?</p> <p>9 A They probably ran the model number which</p> <p>10 would just give you the model, it wouldn't give</p> <p>11 you the engine, I don't think.</p> <p>12 Q So to your knowledge banks don't input the</p> <p>13 VIN number of a vehicle into their system to see</p> <p>14 what accessories are on it before they make a</p> <p>15 loan?</p> <p>16 A They input the model number which gives</p> <p>17 you what model it is, it doesn't give you all the</p> <p>18 information.</p> <p>19 Q Give me an example of a vehicle that could</p> <p>20 be power booked that would increase the amount of</p> <p>21 that vehicle by \$2,000?</p> <p>22 A Can you say that again. An example of</p> <p>23 just the trim level?</p> <p>24 Q Of a vehicle that was power booked that</p> <p>25 would increase the value of the vehicle by \$2,000</p>	<p style="text-align: center;">40</p> <p>1 A Any guide?</p> <p>2 Q Yes.</p> <p>3 A Yes, NADA.</p> <p>4 Q So the bank is looking at an NADA book?</p> <p>5 A Or on the computer.</p> <p>6 Q Which has NADA information?</p> <p>7 A Yes.</p> <p>8 Q And is that the yellow book?</p> <p>9 A Yes.</p> <p>10 Q When you were to look up a Dodge truck in</p> <p>11 the yellow book, what packages could you tell the</p> <p>12 bank about that would raise the value of the</p> <p>13 vehicle by \$2,000?</p> <p>14 A You could say it was an SLT when it</p> <p>15 wasn't.</p> <p>16 Q What is an SLT?</p> <p>17 A It's a trim level.</p> <p>18 Q Okay. What does SLT mean?</p> <p>19 A I don't know. You could say it was a</p> <p>20 Lariat, which is another trim level.</p> <p>21 Q Would that increase the value of a vehicle</p> <p>22 by \$2,000?</p> <p>23 A Probably.</p> <p>24 Q Probably or do you know?</p> <p>25 A No, I don't know specifically what the</p>



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<p style="text-align: center;">41</p> <p>1 exact add is for a Lariat in the book. It's</p> <p>2 probably closer to \$2,000.</p> <p>3 Q Would you agree with me that it would be</p> <p>4 hard to add or lie about accessories on a vehicle</p> <p>5 to increase the value of that vehicle by \$2,000?</p> <p>6 A No, I wouldn't agree with you. It would</p> <p>7 depend on the vehicle. If it was an inexpensive</p> <p>8 vehicle like a Neon or Sentra, yes, it would be</p> <p>9 difficult. But a more expensive vehicle, no, it</p> <p>10 would not be difficult at all.</p> <p>11 Q What do you call a more expensive vehicle?</p> <p>12 A A vehicle that has a value of 15 to</p> <p>13 \$20,000 or more. As a rule, the more expensive a</p> <p>14 vehicle is, the more expensive the adds are.</p> <p>15 Q With regards to the hundreds of allegedly</p> <p>16 power booked cars in 2006, how many of those do</p> <p>17 you assert had their value raised \$2,000 or more?</p> <p>18 A The majority of them, vast majority of</p> <p>19 them.</p> <p>20 Q And, again, if I understand your</p> <p>21 testimony, these aren't vehicles you submitted any</p> <p>22 information to the bank about?</p> <p>23 A Not knowingly, no.</p> <p>24 Q With regards to Scott Martin, and I guess</p> <p>25 that's creating pay stubs, and that's what I got,</p>	<p style="text-align: center;">43</p> <p>1 A Marvin White.</p> <p>2 Q I take it you did not complain to Shelby</p> <p>3 Curtisinger; correct?</p> <p>4 A I don't think so.</p> <p>5 Q And you did not complain to John Tosch;</p> <p>6 correct?</p> <p>7 A Correct.</p> <p>8 Q And you did not complain to Mr. Vern</p> <p>9 Buchanan; correct?</p> <p>10 A Correct.</p> <p>11 Q And you did not do any kind of written</p> <p>12 documentation of the name; correct?</p> <p>13 A Correct.</p> <p>14 Q And you did not put any banks on notice</p> <p>15 with regards to this either?</p> <p>16 A No, probably not.</p> <p>17 Q When this type of information, in a deal</p> <p>18 that Scott Martin would allegedly create a pay</p> <p>19 stub, would that be considered a secondary deal,</p> <p>20 is that when that would happen?</p> <p>21 A Yes.</p> <p>22 Q When a bank gets a secondary deal, does</p> <p>23 the bank call the customer and verify information?</p> <p>24 A Yes.</p> <p>25 Q What percentage of the time do you think</p>
<p style="text-align: center;">42</p> <p>1 creating pay stubs, about how many times did that</p> <p>2 happen in 2006?</p> <p>3 A I don't know a specific number. One was</p> <p>4 too many.</p> <p>5 Q Do you have a ballpark?</p> <p>6 A Ballpark?</p> <p>7 Q Yes, sir.</p> <p>8 A A dozen, maybe more. I don't know</p> <p>9 specifically. You're asking for a specific</p> <p>10 number, I don't have one.</p> <p>11 Q And in 2006 Scott Martin was not an</p> <p>12 employee of the dealership; correct?</p> <p>13 A I don't remember.</p> <p>14 Q He had already been fired by Don Caldwell;</p> <p>15 correct?</p> <p>16 A Again, I don't remember.</p> <p>17 Q Was he fired by Don Caldwell?</p> <p>18 A I don't know. All I know is he left. I</p> <p>19 don't know the circumstances.</p> <p>20 Q Who did you complain to with regards to</p> <p>21 Scott Martin creating pay stubs?</p> <p>22 A His father-in-law and him, Don Caldwell --</p> <p>23 his son-in-law, I mean. I said father-in-law, I</p> <p>24 meant son-in-law.</p> <p>25 Q Who is his son-in-law?</p>	<p style="text-align: center;">44</p> <p>1 the bank calls a customer and verifies information</p> <p>2 on a secondary deal in 2006?</p> <p>3 A I don't know a specific amount, specific</p> <p>4 number. I think it would depend on the deal.</p> <p>5 Q Would it be about 80 percent of the time?</p> <p>6 A I think 80 percent of the time they will</p> <p>7 get a phone call, the customer would get a phone</p> <p>8 call from the bank. What they would ask would</p> <p>9 vary depending on the deal.</p> <p>10 Q Do banks ever verify income by calling an</p> <p>11 employer on a secondary deal in 2006?</p> <p>12 A I would think not if they have a pay stub.</p> <p>13 Q So you don't think a bank verifies income</p> <p>14 with an employer on a secondary deal because they</p> <p>15 have received a pay stub?</p> <p>16 A Yes.</p> <p>17 Q Is that your testimony?</p> <p>18 A Yes.</p> <p>19 Q When you said something to Don Caldwell</p> <p>20 with regards to Scott Martin, what did Don</p> <p>21 Caldwell say to you?</p> <p>22 A Same thing he always said, don't rock the</p> <p>23 boat. And, again, I'm paraphrasing.</p> <p>24 Q Did he ever threaten you?</p> <p>25 A Did he ever threaten me?</p>



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1 Q With anything?
 2 A Would "don't rock the boat" be a threat?
 3 Q It's your testimony.
 4 A I asked you a question.
 5 Q I'm not here to answer questions.
 6 A Okay. Well, then, yes. I would consider
 7 "don't rock the boat" to be a threat.
 8 Q Did he say anything to you besides don't
 9 rock the boat?
 10 A That's a paraphrase, I'm not saying he
 11 said that specifically.
 12 Q Well, what specifically did he say?
 13 A I don't remember specifically. He would
 14 say that's the way things are done and deal with
 15 it.
 16 Q Is that what he said or are you still
 17 paraphrasing?
 18 A I'm paraphrasing. I don't remember word
 19 for word what he said.
 20 Q How many times did you complain to Don
 21 Caldwell about Scott Martin?
 22 A Several times.
 23 Q Several is how many? To me it's three, so
 24 I don't. And I don't know where I got that from.
 25 A Three or four times.

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1 Q Three are four times?
 2 A At least.
 3 Q And that at least three or four times, the
 4 impression that you were left with is that he said
 5 words or words to the effect of don't rock the
 6 boat?
 7 A Yes.
 8 Q The credit information that the bank
 9 reviewed in making a decision to make a loan in
 10 2006, was that submitted to the bank by use of the
 11 dealer track system?
 12 A Yes, primarily.
 13 Q Who inputted the information into the
 14 dealer track system by title?
 15 A Whichever finance manager did the deal.
 16 Q For it would be done by finance?
 17 A Yes.
 18 Q So it was the finance department that
 19 provided the income information and credit
 20 information to the bank; correct?
 21 A Not exactly, no. The income would have
 22 been on the credit application. The credit
 23 application would have been filled out by the
 24 salesman.
 25 Q And according to -- well, let me ask you

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1 this --
 2 A And, again, not to interrupt, I'm sorry,
 3 there were also times the sales manager would send
 4 credit applications to the banks.
 5 Q What percentage would that occur?
 6 A Not a big percentage, maybe 10 to
 7 20 percent.
 8 Q When you talked to a customer, did you
 9 ever go over their credit application and verify
 10 the information?
 11 A Sometimes. I'm sure I did sometimes. Not
 12 as a rule.
 13 Q In JM&A school weren't you taught to
 14 verify credit applications with each and every
 15 customer?
 16 A Probably. JM&A teaches you a lot of
 17 things that I don't agree with, like the menu, for
 18 example.
 19 Q So was there a policy at Venice Dodge
 20 Nissan where you were supposed to verify customer
 21 information with the customer that was on their
 22 credit application?
 23 A No, not that I'm aware of.
 24 Q And you chose at least not to do that
 25 yourself; correct?

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1 A I don't think any of the finance managers
 2 did.
 3 Q And it was the finance managers that would
 4 load the information; correct?
 5 A In the dealer track?
 6 Q Yes.
 7 A Yes.
 8 Q How did you know or how would you become
 9 aware -- well, let me back up.
 10 Your complaint says that credit
 11 applications were falsified.
 12 A Yes.
 13 Q Are you aware of that?
 14 A Yes.
 15 Q How would you become aware that
 16 information in the credit applications were false
 17 if you didn't verify any of that information?
 18 A Because sometimes it was obvious.
 19 Q And how would it be obvious?
 20 A If you had a customer that had a job that
 21 you knew was a \$30,000-a-year job or thereabouts
 22 and the credit application said 60 or 70,000.
 23 Q And did you have these instances?
 24 A Probably.
 25 Q Did you go ahead and submit that



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<p style="text-align: center;">49</p> <p>1 information to a bank?</p> <p>2 A Yes.</p> <p>3 Q So if I understand your testimony</p> <p>4 correctly, you knowingly submitted false</p> <p>5 information to a lending institution?</p> <p>6 A No, that is not correct.</p> <p>7 Q Okay.</p> <p>8 A I don't know that. I might have suspected</p> <p>9 it but I didn't know it for a fact. I had a</p> <p>10 policy with the salesmen would always bring me</p> <p>11 their deals and I would look over the deals. If I</p> <p>12 suspected there was something wrong with the deal,</p> <p>13 I wouldn't have anything to do with it. I would</p> <p>14 turn it over to another finance manager, primarily</p> <p>15 Brad Combs and Jason Martin. They didn't seem to</p> <p>16 have a problem with it.</p> <p>17 Q So let me see if I understand it. Did you</p> <p>18 review any salesmen deals or just deals that came</p> <p>19 to you?</p> <p>20 A Just the ones that came to me.</p> <p>21 Q And if you reviewed a deal that you felt</p> <p>22 was incorrect, you would just send it to another</p> <p>23 F&I manager?</p> <p>24 A If I suspected, yes.</p> <p>25 Q And at that point what would you do?</p>	<p style="text-align: center;">51</p> <p>1 Q And did you view people asking -- did you</p> <p>2 view employees asking customers to sign blank</p> <p>3 credit applications?</p> <p>4 A Did I view them asking the customer?</p> <p>5 Q Yes.</p> <p>6 A No.</p> <p>7 Q How do you know it occurred?</p> <p>8 A Because they were in the deals.</p> <p>9 Q There were blank credit applications in</p> <p>10 the deals?</p> <p>11 A Uh-huh.</p> <p>12 Q Is that a yes?</p> <p>13 A Yes; I'm sorry.</p> <p>14 Q Were those deals that you saw?</p> <p>15 A Yes.</p> <p>16 Q Were those deals that you were working on?</p> <p>17 A No.</p> <p>18 Q If you saw them, how is it that you had</p> <p>19 occasion to view those?</p> <p>20 A Because the salesman would bring me the</p> <p>21 deals and I would distribute them to the finance</p> <p>22 managers and I would ask the salesman to take it to</p> <p>23 a particular finance manager.</p> <p>24 Q So if you saw a deal with a blank credit</p> <p>25 application, you would allow that deal to continue</p>
<p style="text-align: center;">50</p> <p>1 A Usually go tell Don, say something to Don</p> <p>2 or say something to the sales manager.</p> <p>3 Q What would you say?</p> <p>4 A I say I suspect there is something wrong</p> <p>5 with the deal.</p> <p>6 Q And what would they say to you?</p> <p>7 A Different things. Sometimes they wouldn't</p> <p>8 say anything. Sometimes they would say, you know,</p> <p>9 that's what we had to do to put the deal together.</p> <p>10 Different things.</p> <p>11 Q Did you keep any examples of falsified or</p> <p>12 allegedly falsified credit apps?</p> <p>13 A No.</p> <p>14 Q Your complaint or first alleged complaint</p> <p>15 states that blank credit applications were signed</p> <p>16 by customers.</p> <p>17 Are you aware of that?</p> <p>18 A Yes.</p> <p>19 Q Did you ask customers to sign blank credit</p> <p>20 apps?</p> <p>21 A No. The only time I had any interaction</p> <p>22 with a credit application, if I had to remove</p> <p>23 somebody, if there were two people and one person</p> <p>24 had bad credit, you take that person off. But,</p> <p>25 no, I didn't ask people to sign anything bogus.</p>	<p style="text-align: center;">52</p> <p>1 through the F&I office?</p> <p>2 A I would allow -- would I allow it? I</p> <p>3 wouldn't have any choice.</p> <p>4 Q And why wouldn't you have any choice?</p> <p>5 A Because that was the way it was done.</p> <p>6 That's the way things were done.</p> <p>7 Q Did you ever advise any government agency</p> <p>8 in the year 2006 with regards to any processes or</p> <p>9 issues at Venice Dodge Nissan?</p> <p>10 A No.</p> <p>11 Q Did you ever write one memo with regards</p> <p>12 to any acts that you believe to be wrongful that</p> <p>13 occurred at Venice Dodge Nissan in 2006?</p> <p>14 A Write a memo?</p> <p>15 Q Yes. Did you let anyone know in writing?</p> <p>16 A In writing, no.</p> <p>17 Q Did you at any time in 2006 advise</p> <p>18 Mr. Buchanan of any actions that you believe were</p> <p>19 going on at Venice Dodge Nissan that you thought</p> <p>20 were incorrect?</p> <p>21 A No.</p> <p>22 Q Did you ever input into the dealer track</p> <p>23 system any information from a customer that you</p> <p>24 knew was incorrect and send it to a lending</p> <p>25 institution?</p>



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<p style="text-align: center;">53</p> <p>1 A No.</p> <p>2 Q Are you aware of any bank in 2006 that</p> <p>3 complained to you with regards to false</p> <p>4 information being supplied to them?</p> <p>5 A I don't remember a specific bank, no.</p> <p>6 Q In the entire time that you worked there</p> <p>7 can you provide me a name of a bank wherein</p> <p>8 somebody from that bank complained about receiving</p> <p>9 false information from Venice Dodge Nissan?</p> <p>10 A Sure.</p> <p>11 Q What bank?</p> <p>12 A Household Bank, Ford Motor Credit,</p> <p>13 SunTrust. Those are the three that come to mind.</p> <p>14 Q Do you recall the year where you received</p> <p>15 a complaint from Household Bank?</p> <p>16 A No. It would have been either '03 or '04.</p> <p>17 Q Was that a deal that you did?</p> <p>18 A No.</p> <p>19 Q And is it safe to assume that you didn't</p> <p>20 get reprimanded with regards to those two</p> <p>21 household deals?</p> <p>22 A By?</p> <p>23 Q Anybody.</p> <p>24 A My supervisor?</p> <p>25 Q By anybody at Venice Dodge Nissan.</p>	<p style="text-align: center;">55</p> <p>1 A Bob Wallikawitz (phonetic), I don't know</p> <p>2 how to spell it. Gordon Johnston.</p> <p>3 Q These are SunTrust?</p> <p>4 A Yes. I think it was those three</p> <p>5 primarily.</p> <p>6 Q Do you remember any of the specifics on</p> <p>7 the Household deal?</p> <p>8 A No.</p> <p>9 Q Do you remember any of the specifics on</p> <p>10 the --</p> <p>11 A Actually, I take that back. On the</p> <p>12 Household deal I do remember one deal -- what was</p> <p>13 that girl's name? I can't think of her name right</p> <p>14 now. I'll think of it in a second. She sued the</p> <p>15 dealership. I can't think of her name right now.</p> <p>16 Q How many times while you were employed at</p> <p>17 the dealership do you remember the dealership</p> <p>18 being sued?</p> <p>19 A Twice that I know of.</p> <p>20 Q Do you ever remember a lending institution</p> <p>21 suing the dealership?</p> <p>22 A No. Again, not that I know of. I know we</p> <p>23 were audited by Chrysler. I don't know if that</p> <p>24 would be considered a lawsuit or not. I guess</p> <p>25 that's not a lawsuit.</p>
<p style="text-align: center;">54</p> <p>1 A No.</p> <p>2 Q Do you know what year you remember</p> <p>3 somebody from FMCC complaining about false</p> <p>4 information being submitted about a customer to</p> <p>5 them?</p> <p>6 A '02 and '03.</p> <p>7 Q Do you know a year which somebody from</p> <p>8 SunTrust complained to you about false information</p> <p>9 being submitted by Venice Dodge Nissan about a</p> <p>10 customer?</p> <p>11 A Probably '03, '04, '05. I don't remember</p> <p>12 specific years but in that range.</p> <p>13 Q Who from Household in either '02 or</p> <p>14 '03 did you speak with?</p> <p>15 A A funding person. I don't remember the</p> <p>16 person's name.</p> <p>17 Q Who at FMCC did you speak to?</p> <p>18 A The buyer.</p> <p>19 Q And what was the name of the buyer?</p> <p>20 A I don't remember her name.</p> <p>21 Q What office was she in?</p> <p>22 A Tampa, I think.</p> <p>23 Q Was it the Tampa office?</p> <p>24 A I think it was Tampa.</p> <p>25 Q And who from SunTrust?</p>	<p style="text-align: center;">56</p> <p>1 Q And they weren't a lending institution</p> <p>2 either; correct?</p> <p>3 A Chrysler Financial.</p> <p>4 Q You remember an audit by Chrysler</p> <p>5 Financial?</p> <p>6 A Chrysler Motor Corp. I assume Chrysler</p> <p>7 Financial was involved in it, I really don't know.</p> <p>8 Q Do you remember any information with</p> <p>9 regards to that audit at all?</p> <p>10 A It had to do with rebates and</p> <p>11 documentation of rebates.</p> <p>12 Q And that was in 2004; correct?</p> <p>13 A '04 or '05.</p> <p>14 Q So when your complaint says it's '06,</p> <p>15 that's incorrect; true?</p> <p>16 A It might have been '06, I don't remember</p> <p>17 the specific year. It would have been '04 or</p> <p>18 '05 or '06, one of those years.</p> <p>19 Q If I remember your testimony, it had to do</p> <p>20 with rebates?</p> <p>21 A Yes.</p> <p>22 Q And do you remember any policies being</p> <p>23 placed into the dealership to prevent that from</p> <p>24 occurring again?</p> <p>25 A No.</p>



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<p style="text-align: center;">57</p> <p>1 Q Your complaint -- let me ask you this,</p> <p>2 what is a book-out sheet?</p> <p>3 A It's a sheet that has got the vehicle</p> <p>4 listed and the equipment.</p> <p>5 Q In 2006 did the sales department use</p> <p>6 book-out sheets?</p> <p>7 A Probably. I don't remember specifically.</p> <p>8 They either used handwritten ones or printed out</p> <p>9 ones, one or the other, I think.</p> <p>10 Q Well, your complaint says that book-out</p> <p>11 sheets are prepared in the sales department by the</p> <p>12 sales manager or used car manager and are supposed</p> <p>13 to list the equipment that is on the vehicle?</p> <p>14 A Correct.</p> <p>15 Q So is it your testimony that the sales</p> <p>16 department has book-out sheets?</p> <p>17 A No. The sales manager, Marvin White,</p> <p>18 specifically, used car manager.</p> <p>19 Q What did that book-out sheet look like?</p> <p>20 A It was a white sheet of paper that had</p> <p>21 printed out or either handwritten or printed out</p> <p>22 the information for the vehicle.</p> <p>23 Q Was it a formal document that was printed</p> <p>24 by the dealership for use by the sales department?</p> <p>25 A Yes.</p>	<p style="text-align: center;">59</p> <p>1 A Yes.</p> <p>2 Q But if I understand your testimony, you</p> <p>3 never knowingly submitted power booked information</p> <p>4 to a lending institution?</p> <p>5 A Correct.</p> <p>6 Q So to the best of your knowledge no deal</p> <p>7 that you worked on personally was power booked;</p> <p>8 true?</p> <p>9 A Yes.</p> <p>10 Q And to your knowledge no deal that Padilla</p> <p>11 worked on was power booked; correct?</p> <p>12 A I don't know specifically what deals he</p> <p>13 worked on or didn't work on. I know as a rule he</p> <p>14 didn't want to do it, didn't want to participate.</p> <p>15 Q You don't know if he did or he didn't?</p> <p>16 A Specifically, no.</p> <p>17 Q But you do know or you do have -- you do</p> <p>18 testify specifically that Jason Martin did;</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 MR. LYONS: Object to the form of the</p> <p>22 question.</p> <p>23 You can answer.</p> <p>24 BY MR. ORNSTEIN:</p> <p>25 Q And do you testify here today that Brad</p>
<p style="text-align: center;">58</p> <p>1 Q And if I understand your testimony --</p> <p>2 well, let me ask you this: Was this a document</p> <p>3 that was regularly used by the sales department in</p> <p>4 2006?</p> <p>5 A It wasn't used on every single deal, but,</p> <p>6 yes, for the most part, probably 80 or 90 percent</p> <p>7 of the time.</p> <p>8 Q Would that be the document that would be</p> <p>9 used for power booking?</p> <p>10 A Yes.</p> <p>11 Q So at least in 2006, if I understand your</p> <p>12 testimony correctly, there were hundreds of</p> <p>13 book-out sheets used by the sales department;</p> <p>14 correct?</p> <p>15 A By the sales manager, used car manager.</p> <p>16 Q Correct?</p> <p>17 A Yes.</p> <p>18 Q And the sales manager works in the sales</p> <p>19 department?</p> <p>20 A Yes, in the used car department.</p> <p>21 Q And if a transaction was completed at the</p> <p>22 dealership by use of power booking, you would have</p> <p>23 been paid on those transactions; correct?</p> <p>24 A Yes.</p> <p>25 Q You profited by those transactions; true?</p>	<p style="text-align: center;">60</p> <p>1 Combs did?</p> <p>2 A Yes. It didn't seem to bother them.</p> <p>3 Q And to the best of your knowledge in 2006,</p> <p>4 those two gentlemen would have been responsible</p> <p>5 for the hundreds of power booked deals?</p> <p>6 A Responsible, no. Marvin White would have</p> <p>7 been responsible. He's the one that power booked</p> <p>8 them, not them.</p> <p>9 Q But they would have done the F&I?</p> <p>10 A Yes.</p> <p>11 Q The financing on them?</p> <p>12 A Uh-huh, yes.</p> <p>13 Q Your complaint says that Defendants</p> <p>14 through its agents and employees prepared and</p> <p>15 submitted false and misleading reports and</p> <p>16 documentation misrepresenting to manufacturers</p> <p>17 that vehicles had been sold which had not been</p> <p>18 sold, which resulted in the Defendant, 1099,</p> <p>19 receiving rebate money, holdback money, and</p> <p>20 incentive money.</p> <p>21 A Correct.</p> <p>22 Q Are you aware of that testimony?</p> <p>23 A Yes.</p> <p>24 Q How would false reporting create an issue</p> <p>25 with holdback?</p>



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<p style="text-align: center;">61</p> <p>1 A Because you get paid on the holdback. 2 They would report cars, when you get to the end of 3 the month, if there were one or two days left and 4 they didn't have enough cars, they hit to bug you 5 to get an incentive. They would report two or 6 three cars, whatever they needed, whatever the 7 number was, to get to the level to get incentives 8 from Chrysler. 9 Q But does that have anything to do with 10 holdback? 11 A Does it have anything to do with holdback? 12 I don't know. I think the point of that is the 13 rebates. 14 Q Well, I'm just reading your complaint and 15 I'm trying to ascertain what it is you know 16 personally in your complaint and what may or may 17 not be correct in your complaint. 18 A What I know personally is that cars were 19 reported sold that were not actually sold. 20 Q Okay. 21 A And the dealership benefited from it. 22 Q Do you know -- 23 A And it was illegal. That's what I know 24 personally. 25 Q What law did it break?</p>	<p style="text-align: center;">63</p> <p>1 we were charged back almost \$300,000. That's the 2 one I'm aware of personally. There may have been 3 others, I don't know. 4 Q So you have no personal knowledge of any 5 others; correct? 6 A Correct. 7 Q And as you sit here today you're not aware 8 of any others; are you? 9 A I'm not aware of any others but there 10 might have been others. I don't know. 11 Q You don't know. 12 And the one that you're aware of in the 13 complaint says it was for \$290,000? 14 A Approximately, yes. That's what I was 15 told by your clients. 16 Q And you don't know whether that did or did 17 not have anything to do with holdback money; 18 correct? 19 A When you sell a car you're paid holdback 20 money from the factory. So I would think it 21 would. 22 Q Do you know or do you think? 23 A When you sell a car you collect holdback 24 money. So, yes, I know. 25 Q So you think you get the holdback money</p>
<p style="text-align: center;">62</p> <p>1 A I don't know. Is it legal to report cars 2 and defraud a corporation? You tell me, is that 3 legal? 4 Q What law did it break, sir? 5 A I don't know what specific law it broke. 6 You would know that better than me. 7 Q Was the dealership ever sued by Chrysler? 8 A They were charged back and almost sued 9 almost \$300,000. 10 MR. ORNSTEIN: Would you read him 11 back the question, please. 12 A Were they sued? No, they were not sued. 13 Q Was the dealership's dealer agreement ever 14 terminated? 15 A Not that I'm aware of. 16 Q How many audits do you remember? 17 A That one specifically. There were others 18 but I don't know what the outcome was of them. 19 Q What other audits were there by Chrysler? 20 A Wouldn't there be a regular audit every 21 year or every couple of years? 22 Q What audit, what audits are you aware of 23 that occurred at Chrysler -- at Venice Dodge 24 Nissan by Chrysler? 25 A The one that I'm aware of is the one that</p>	<p style="text-align: center;">64</p> <p>1 when you sell the car? 2 A Yes. 3 Q And do you think that the dealer that 4 manufactures actually have audits to audit whether 5 a dealer got holdback money? 6 A No; they don't have audits for holdback 7 money, they have audits for rebate. They audited 8 the dealership and found approximately \$300,000 9 worth of rebate money that was paid that they 10 weren't entitled to. 11 Q Your complaint uses the word holdback. 12 A All right. Then scratch out holdback. I 13 think we're splitting hairs. The bottom line is 14 they did an audit and charged \$290,000 for rebates 15 they weren't entitled to. 16 Q And that happened once; true? 17 A That I'm aware of. 18 Q Your complaint states that the dealership 19 wrongfully received tens of thousands of dollars 20 every month? 21 A Every month? I would say they received it 22 on a pretty regular basis. Every month, I don't 23 know about every month. Probably not every month. 24 But I know there were several months, more than 25 several, where they were paid monies that they</p>



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<p style="text-align: center;">65</p> <p>1 weren't entitled to by reporting cars as being 2 sold when they weren't sold. 3 Q And what months did that occur? 4 A I don't remember specific months. 5 Q Did it happen in 2006? 6 A I don't know specifically. 7 Q Did that have anything to do with your 8 job? 9 A No. 10 Q Did you ever get reprimanded with regards 11 to anything having to do with rebates? 12 A No. 13 Q Did it affect your pay in any way? 14 A No. 15 Q Did it affect your job performance in any 16 way? 17 A No. 18 Q How do you know that it occurred every 19 month? 20 A Because I saw it happening regularly. 21 Q And what did you see happening? 22 A Cars being reported as being sold when 23 they weren't sold. 24 Q Okay. Who did you see do that? 25 A Jack Prater and Joe Scarborough.</p>	<p style="text-align: center;">67</p> <p>1 pay back \$290,000; correct? 2 A Yes. 3 Q It's your complaint. 4 A Yes. 5 Q Did the dealership pay back the \$290,000? 6 A I don't know. They probably disputed it. 7 Q Do you know if they disputed or are you 8 guessing? 9 A No, I believe they did. I believe Shelby 10 Curtsinger told me they did. 11 Q Were they successful in some of that 12 dispute? 13 A I don't know. 14 Q And do you know if Chrysler was satisfied 15 with the result at the end of their discussions? 16 A No, I don't know. 17 Q Were you part of any of the conversations 18 with Chrysler? 19 A No. 20 Q Did the issues with regard to the audit 21 have anything to do with you quitting? 22 A No. 23 Q In 2006 -- let me back up. 24 In any year can you recall etch being 25 pre-loaded into the system so that etch was sold</p>
<p style="text-align: center;">66</p> <p>1 Q Anybody else? 2 A No, those would have been the two Dodge 3 sales managers. 4 Q And how often would they do that? 5 A Several times a year. 6 Q Would they do it every month? 7 A Probably not. 8 Q Well, then, what is it that occurred with 9 regards to rebate money -- we scratched 10 holdback -- and incentive money that caused the 11 dealership to receive tens of thousands of dollars 12 every month wrongfully? 13 A Again, I don't know that it happened every 14 month. 15 Q So if your complaint states that it 16 happened every month, you actually don't know that 17 to be true; correct? 18 A Correct. It happened regularly, though. 19 Q You don't know if it happened tens of 20 thousands of dollars every month either; do you? 21 A Every month, no. But there were 22 definitely tens of thousands of dollars that were 23 collected on a regular basis. 24 Q When Chrysler did the audit, I guess your 25 complaint says that the dealership was required to</p>	<p style="text-align: center;">68</p> <p>1 with every vehicle? 2 A No. 3 Q Your complaint states that -- 4 A I think the windows were etched for a 5 while. 6 Q I'm sorry? 7 A I said I think the windows were etched for 8 a while. I don't remember what years. 9 Q Do you specifically recall etch being 10 applied to vehicles prior to them being sold? 11 A Maybe not. Maybe not. 12 Q Your complaint says the computer operating 13 system was set up to automatically include 14 pre-loads such as etch. 15 Is that an accurate statement? 16 A I think what the point there was that the 17 computer was set up to put certain items into 18 line 1 of the contract. I think that's what that 19 relates to. 20 Q Is it a true statement that the computer 21 operating system was set up to automatically 22 include etch in every deal? 23 A In every deal, no. 24 Q Was it ever set up where it automatically 25 included etch?</p>



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<p style="text-align: center;">69</p> <p>1 A No, I think that again, the point of that</p> <p>2 is that when etch was sold, it was put into line 1</p> <p>3 of the contract rather than disclosed on line 4 of</p> <p>4 the contract. I think that's the point of that.</p> <p>5 Q And what year, if you know, did it become</p> <p>6 required to set, to put etch on line 4?</p> <p>7 A '03 or '04.</p> <p>8 Q And before that it was not an insurance</p> <p>9 product; was it?</p> <p>10 A Before that it was not an insurance</p> <p>11 product?</p> <p>12 Q Etch was not an insurance product?</p> <p>13 A It's something that should have been</p> <p>14 disclosed on line 4 of the contract. It shouldn't</p> <p>15 go on line 1 of the contract, as I understand it.</p> <p>16 Q I got to ask the question again because</p> <p>17 I'm hearing what you're saying and I'm looking at</p> <p>18 what I'm reading. And to be fair to you, what</p> <p>19 you're talking about does come later in your</p> <p>20 complaint but not in the paragraph that I'm asking</p> <p>21 you about.</p> <p>22 A Okay.</p> <p>23 Q Okay. So if your complaint in</p> <p>24 Paragraph 29 states that the computer operating</p> <p>25 system automatically included etch in the price of</p>	<p style="text-align: center;">71</p> <p>1 think that a dealer is entitled to make a profit</p> <p>2 when it accessorizes cars?</p> <p>3 A Yes.</p> <p>4 Q Are you aware of any rule that states how</p> <p>5 much profit a dealer is entitled to make on</p> <p>6 accessories?</p> <p>7 A No.</p> <p>8 Q And if I understand your testimony</p> <p>9 correctly, there would, in fact, be an addendum</p> <p>10 sticker that showed those accessories on the</p> <p>11 vehicle; correct?</p> <p>12 A Yes.</p> <p>13 Q And it would have on the addendum sticker</p> <p>14 a price; correct?</p> <p>15 A Yes. My point is I think it's unethical</p> <p>16 to charge \$1200 for a product that costs a</p> <p>17 hundred. There is no law that says that you can't</p> <p>18 make \$1100 on a 100 product; I think it's</p> <p>19 unethical.</p> <p>20 Q What product did the dealership make</p> <p>21 \$1100?</p> <p>22 A I'm using a round number. The appearance</p> <p>23 package costs approximately a hundred dollars; the</p> <p>24 price on the addendum was 1,000 to \$1100.</p> <p>25 Q Did you ever price out the appearance</p>
<p style="text-align: center;">70</p> <p>1 the vehicle, that would be an incorrect statement;</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q It also states that undercoating, fabric</p> <p>5 guano, paint seal, door edge guard, wheel well</p> <p>6 molding, pinstripes, were also set up in the</p> <p>7 computer operating system to be included</p> <p>8 automatically?</p> <p>9 A I think the point of that is that the cars</p> <p>10 had that stuff put on them while they were on the</p> <p>11 lot.</p> <p>12 Q Well, is there anything wrong with a</p> <p>13 dealer accessorizing vehicles?</p> <p>14 A If you try to force it on the customer,</p> <p>15 yes, in the form of an addendum sticker.</p> <p>16 Q So it is incorrect in your mind for a</p> <p>17 dealer to accessorize a vehicle with pinstripes?</p> <p>18 A No, I didn't say it's incorrect. I think</p> <p>19 it's unethical to put an appearance package on the</p> <p>20 car and stick an addendum sticker on the car for a</p> <p>21 thousand dollars or more for products that cost</p> <p>22 less than a hundred dollars.</p> <p>23 Q Well, how much --</p> <p>24 A Is that wrong? Yes, I think that's wrong.</p> <p>25 Q Okay. On the appearance package do you</p>	<p style="text-align: center;">72</p> <p>1 package?</p> <p>2 A Did I personally price out? No. But I</p> <p>3 know the cost of it was around a hundred dollars.</p> <p>4 Q How do you know that?</p> <p>5 A Because it was common knowledge.</p> <p>6 Q Common knowledge to who?</p> <p>7 A Everybody.</p> <p>8 Q And how did you come across that common</p> <p>9 knowledge?</p> <p>10 A Somebody told me. I'm sure we talked</p> <p>11 about it. The point of the conversation is it's</p> <p>12 unethical to charge a thousand dollars for</p> <p>13 something that costs about a hundred dollars. I'm</p> <p>14 using a round number of a hundred. Maybe it was</p> <p>15 150, maybe it was 200. It's unethical to charge</p> <p>16 that much money for something like that. It's not</p> <p>17 right.</p> <p>18 Q Did you ever see an invoice for any of the</p> <p>19 accessories that went into that appearance</p> <p>20 package?</p> <p>21 A Did I ever see an invoice?</p> <p>22 Q Sure. For a vendor?</p> <p>23 A It wasn't done by a vendor, it was done</p> <p>24 internally.</p> <p>25 Q Did you ever see an internal RF?</p>



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<p style="text-align: center;">73</p> <p>1 A It was added to the cost of the car, so, 2 yes, probably. 3 Q Do you recall ever seeing any internal ROs 4 that showed how much the appearance package cost? 5 A Probably. 6 Q As you sit here today can you recall one? 7 A One specific? 8 Q Yes. 9 A No. 10 Q And do you know other than in round 11 numbers how much an appearance package costs? 12 A No. Exactly to the dollar, no. It's 13 approximately a hundred dollars. 14 Q Well, you said 100, 150, and \$200 so far? 15 A Okay. Somewhere between a hundred and 16 \$200. 17 Q Could it have been more than \$200? 18 A Probably not. 19 Q And in this appearance package, what 20 accessories were added? 21 A Pinstripes, door edge guards, wheel well 22 moldings, and I think that's it. 23 Q Did you ever have anybody come back and 24 complain with regards to the quality of their door 25 edge guards?</p>	<p style="text-align: center;">75</p> <p>1 Q As you sit here -- I have got to ask my 2 question. 3 As you sit here specifically today do you 4 recall complaining to anybody about an appearance 5 package or the price of an appearance package on a 6 vehicle? 7 A I don't remember. 8 Q So you don't remember any instance as you 9 sit here today, true? 10 A Correct. 11 Q Paragraph 30 says, Additionally there were 12 other items such as 30 or 90-day warranties which 13 customers were told were free but, in fact, there 14 was approximately a 37 to \$97 charge to the 15 transaction for these warranty products. 16 That is your complaint. 17 Are you aware of that occurring? 18 A I'm aware that there were warranties on 19 used cars that customers were told were free and 20 there was a cost added to the car, yes. 21 Q And what cost was added to the car? 22 A I think it changed from time to time. It 23 went up as time went on. 24 Q Forget the number. How was a cost added 25 to the vehicle?</p>
<p style="text-align: center;">74</p> <p>1 A No, they complained about the price. 2 Q Did they ever come and complain about the 3 wheel well molding? 4 A The price. 5 Q The product? 6 A I don't know. 7 Q Did you ever have anybody come back and 8 say they complained about the quality of their 9 pinstripe? 10 A There were some that had to be redone. 11 Q Would the dealership redo them? 12 A Yes. 13 Q Who, if anybody, did you complain to with 14 regards to the cost of any appearance package? 15 A Nobody. It was just common knowledge and 16 it was a joke in the dealership that it was added 17 to every car. 18 Q So you never complained to anybody about 19 that; correct? 20 A I don't know. Whether I did specifically 21 or not, I don't remember. 22 Q Okay. Your testimony first was no and 23 then it was I don't know, then it's I don't 24 remember. As you sit here -- 25 A I don't remember.</p>	<p style="text-align: center;">76</p> <p>1 A How was it added? 2 Q Was it a product that the dealership 3 bought that had the warranty, was it -- how did it 4 get added to the cost of the car? 5 A I don't know how it was done 6 accounting-wise. There was a cost added to the 7 car for the warranty. 8 Q How do you know that? 9 A Because that's what we were told. 10 Q Who were you told that by? 11 A Used car manager, Marvin White, probably 12 Don Caldwell. 13 Q Probably or for sure? 14 A Um, probably. 15 Q And you for sure remember a conversation 16 with Marvin White about it; correct? 17 A Yes. 18 Q What exactly did Mr. White tell you about 19 that? 20 A Just that it was added to the car, the 21 cost was added to the car. 22 Q Well, how did they determine a cost? 23 A Oh, I don't know. 24 Q Do you have any personal knowledge that 25 any cost was added to the car for a 30 or a 90-day</p>



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<p style="text-align: center;">77</p> <p>1 warranty?</p> <p>2 A Do I have any personal knowledge? The</p> <p>3 cost was in the car, it was in the cost of the</p> <p>4 car. I don't understand your question.</p> <p>5 Q I don't understand how it got into the</p> <p>6 cost of the car.</p> <p>7 A I don't know how it was done specifically.</p> <p>8 You might want to ask the office manager. I don't</p> <p>9 know the mechanics of how it was added to the cost</p> <p>10 of the car.</p> <p>11 Q I'm trying to understand how it got in</p> <p>12 your complaint.</p> <p>13 A Okay.</p> <p>14 Q And I'm assuming that you have some</p> <p>15 knowledge with regards to what seems to be very</p> <p>16 specific information in Paragraph 30 of your</p> <p>17 complaint.</p> <p>18 A Okay.</p> <p>19 Q Okay. And your complaint says that a</p> <p>20 charge was added to the car between \$37 to \$97.</p> <p>21 And that charge was added to the transaction for</p> <p>22 these warranty products.</p> <p>23 Are you with me?</p> <p>24 A Yeah, I'm with you.</p> <p>25 Q What warranty product are you talking</p>	<p style="text-align: center;">79</p> <p>1 you aware of any other information in that regard?</p> <p>2 A Again, it was just common knowledge.</p> <p>3 Q Then who else besides Marvin White</p> <p>4 discussed that with you, if it was common</p> <p>5 knowledge?</p> <p>6 A I don't remember specifically.</p> <p>7 Q Do you have any clear recollection of</p> <p>8 discussing the cost of a 30 or 90-day warranty</p> <p>9 with any other person besides Marvin White?</p> <p>10 A No.</p> <p>11 Q Do you know what year you had that</p> <p>12 conversation --</p> <p>13 A No.</p> <p>14 Q -- with Marvin White?</p> <p>15 A No, I do not.</p> <p>16 Q Could it have been in 2006?</p> <p>17 A It could have been, I don't remember</p> <p>18 specifically.</p> <p>19 Q But it might not have been in 2006?</p> <p>20 A It might not have been.</p> <p>21 Q Did that have anything to do with your</p> <p>22 job?</p> <p>23 A No.</p> <p>24 THE WITNESS: Excuse me one second</p> <p>25 while I fill this bottle up. I'll be</p>
<p style="text-align: center;">78</p> <p>1 about?</p> <p>2 A The 30-day warranty or 90-day warranty.</p> <p>3 It went back and forth, sometimes it was 30 days,</p> <p>4 sometimes it was 90.</p> <p>5 Q When you talk about a product, was that a</p> <p>6 product from a company like JM&A?</p> <p>7 A No, it was an in-house warranty.</p> <p>8 Q And are you, do you have any personal</p> <p>9 knowledge of any accounting dollar being added to</p> <p>10 the price of a used car for such a warranty?</p> <p>11 A I don't know what you mean by personal</p> <p>12 knowledge. It was common knowledge that there was</p> <p>13 a cost added to every used car to offset used car</p> <p>14 warranties, the 30-day warranty or the 90-day</p> <p>15 warranty. It was put into a pool and if something</p> <p>16 broke they took it out of that account.</p> <p>17 Does that answer your question? I don't</p> <p>18 understand what you're asking me about specific</p> <p>19 knowledge.</p> <p>20 Q What pool are you talking about?</p> <p>21 A Again, I'm not an accountant. You would</p> <p>22 want to ask the comptroller where the money came</p> <p>23 from. What account it came from specifically, I</p> <p>24 don't know.</p> <p>25 Q Other than what Marvin White told you, are</p>	<p style="text-align: center;">80</p> <p>1 right back.</p> <p>2 MR. ORNSTEIN: Actually, why don't</p> <p>3 you take five minutes, we have been going</p> <p>4 close to two hours.</p> <p>5 [Brief recess was taken.]</p> <p>6 A Which version of the complaint are you</p> <p>7 looking at? Are you reading from the first one or</p> <p>8 the second one?</p> <p>9 BY MR. ORNSTEIN:</p> <p>10 Q The first amended complaint.</p> <p>11 A Okay. Shouldn't we be looking at the</p> <p>12 second one? Oh, first amended, so that would be</p> <p>13 the second one?</p> <p>14 Q Yes.</p> <p>15 A Okay. Go ahead.</p> <p>16 MR. ORNSTEIN: Go ahead and mark</p> <p>17 that.</p> <p>18 [The Job description for finance</p> <p>19 managers was hereby marked as Defendant's</p> <p>20 Exhibit 1 for identification, as of this</p> <p>21 date.]</p> <p>22 BY MR. ORNSTEIN:</p> <p>23 Q Let me show you what has been marked as</p> <p>24 Exhibit 1 and ask you if you recognize that</p> <p>25 document?</p>



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<p style="text-align: center;">81</p> <p>1 MR. LYONS: May I ask you what you're</p> <p>2 handing the witness?</p> <p>3 MR. ORNSTEIN: Exhibit 1, which is --</p> <p>4 MR. LYONS: What is Exhibit 1? What</p> <p>5 does it purport to be?</p> <p>6 MR. ORNSTEIN: Job description.</p> <p>7 MR. LYONS: Has it been previously</p> <p>8 furnished to us with a Bates stamped</p> <p>9 number?</p> <p>10 MR. ORNSTEIN: Don't know.</p> <p>11 A (Witness perusing document.)</p> <p>12 Okay.</p> <p>13 BY MR. ORNSTEIN:</p> <p>14 Q Do you recall that document?</p> <p>15 A Not specifically, no.</p> <p>16 Q Did you sign that document?</p> <p>17 A It looks like it, yes.</p> <p>18 Q Do you think you read it before you signed</p> <p>19 it?</p> <p>20 A I'm sure I did. I would think I did.</p> <p>21 Q And was this your job description?</p> <p>22 A I see that it says job description for</p> <p>23 finance managers.</p> <p>24 Q Were you a finance manager?</p> <p>25 A Yes.</p>	<p style="text-align: center;">83</p> <p>1 A Yes.</p> <p>2 Q And you didn't quit in 2002; right?</p> <p>3 A Correct.</p> <p>4 Q And you didn't quit in 2003; right?</p> <p>5 A Yes, correct.</p> <p>6 Q You didn't quit in 2004; true?</p> <p>7 A Correct.</p> <p>8 Q You didn't quit in 2005; true?</p> <p>9 A Correct.</p> <p>10 Q And you didn't quit in 2006; true?</p> <p>11 A Yes, correct.</p> <p>12 Q And you had signed a document, had you</p> <p>13 not, that said that you would report any company</p> <p>14 policy and procedure violations to a manager;</p> <p>15 true?</p> <p>16 A Yes.</p> <p>17 Q And when somebody didn't heed your</p> <p>18 complaints, you didn't reduce those to writing;</p> <p>19 correct?</p> <p>20 A Does it say I'm supposed to put it in</p> <p>21 writing in here?</p> <p>22 Q Can you read back the question, please.</p> <p>23 A Does it say I'm supposed to quit if</p> <p>24 nothing comes of my complaints? Does it? Here,</p> <p>25 let me look.</p>
<p style="text-align: center;">82</p> <p>1 Q And reviewing that job description, would</p> <p>2 that be a fair recitation of what your job</p> <p>3 description was in 2006?</p> <p>4 A No.</p> <p>5 Q What changed in 2006?</p> <p>6 A Well, this is dated 2004, April 26th, and</p> <p>7 I see that the second duty says report any company</p> <p>8 policy and procedure violations to your manager,</p> <p>9 which I did repeatedly, and nothing became of it.</p> <p>10 So I'm thinking that it's not part of my job</p> <p>11 description to report to my supervisor.</p> <p>12 Q Was it part of your job description in</p> <p>13 2005?</p> <p>14 A Yes. According to this it's dated 2004.</p> <p>15 But I complained in 2004 and 2005 and 2006.</p> <p>16 Q So if I understand your testimony, then --</p> <p>17 how many years did you work there? Was it</p> <p>18 five-and-a-half?</p> <p>19 A A little less than five-and-a-half. Five</p> <p>20 years and four months.</p> <p>21 Q So for five years and four months you</p> <p>22 worked at Venice Dodge Nissan; correct?</p> <p>23 A Yes.</p> <p>24 Q And according to your complaint you</p> <p>25 complained about alleged bad acts; true?</p>	<p style="text-align: center;">84</p> <p>1 Q How about you go ahead and when you're</p> <p>2 done I'll read you back the question I asked you</p> <p>3 and you can answer it.</p> <p>4 A Well, let's just see if it says that I'm</p> <p>5 supposed to quit if I report a violation and</p> <p>6 nothing happens.</p> <p>7 Q Take your time --</p> <p>8 A Sure.</p> <p>9 Q -- and then we'll get back to the question</p> <p>10 that I asked you.</p> <p>11 A It doesn't say that.</p> <p>12 Q That was the question you asked yourself.</p> <p>13 Do you think you can --</p> <p>14 A No, I asked you, I didn't ask myself.</p> <p>15 Q Can we go ahead and ask the question that</p> <p>16 I asked you?</p> <p>17 A Sure. What was your question again?</p> <p>18 [Record read as requested.]</p> <p>19 MR. LYONS: Hello?</p> <p>20 THE WITNESS: We're here.</p> <p>21 MR. LYONS: I didn't hear anything</p> <p>22 and sometimes I get disconnected so I</p> <p>23 wanted to make sure that didn't happen.</p> <p>24 THE WITNESS: What was the question;</p> <p>25 I'm sorry?</p>



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<p style="text-align: center;">85</p> <p>1 [Record read as requested.]</p> <p>2 A That's correct.</p> <p>3 BY MR. ORNSTEIN:</p> <p>4 Q It says that every finance manager is</p> <p>5 required to disclose to every customer the term,</p> <p>6 rate, payment price and all products sold via the</p> <p>7 menu presentation.</p> <p>8 Did you do that?</p> <p>9 A No. I objected to that as well. Let's</p> <p>10 get back to No. 2 and your original question about</p> <p>11 putting it in writing, reducing it to writing is</p> <p>12 what I think it said.</p> <p>13 Does it say in here that I'm supposed to</p> <p>14 reduce it to writing? Does it? Does it say that</p> <p>15 I'm supposed to quit? I'll take that as a no.</p> <p>16 Go ahead.</p> <p>17 Q Are you ready?</p> <p>18 A I'm ready.</p> <p>19 Q Okay. It says that every finance manager</p> <p>20 is required to disclose to every customer the</p> <p>21 term.</p> <p>22 Did you disclose the term to every one of</p> <p>23 your customers?</p> <p>24 A Yes.</p> <p>25 Q Rate, did you disclose the rate to every</p>	<p style="text-align: center;">87</p> <p>1 A Did I ever work with them?</p> <p>2 Q Sure. Did people from JM&A ever come to</p> <p>3 the dealership and work with you?</p> <p>4 A Yes.</p> <p>5 Q And did they work with you on your F&I</p> <p>6 skills?</p> <p>7 A Yes, probably.</p> <p>8 Q Did they audit you from time to time?</p> <p>9 A Yes.</p> <p>10 Q And did they implement or provide the</p> <p>11 dealership with the menu that you used?</p> <p>12 A I believe they provided it to them. The</p> <p>13 implementation was done by the dealer.</p> <p>14 Q But the form and the use of the menu came</p> <p>15 from JM&A; correct?</p> <p>16 A I don't know that. I would think so but I</p> <p>17 don't know that.</p> <p>18 Q Who is JM&A?</p> <p>19 A Who are they?</p> <p>20 Q Yes, sir.</p> <p>21 A Jim Moran & Associates.</p> <p>22 Q And what does JM&A do?</p> <p>23 A They sell warranties. They provide</p> <p>24 warranties that are sold by the dealer, warranties</p> <p>25 and after-sell products.</p>
<p style="text-align: center;">86</p> <p>1 one of your customers?</p> <p>2 A Yes.</p> <p>3 Q Payment, did you disclose the payments to</p> <p>4 every one of your customers?</p> <p>5 A Yes.</p> <p>6 Q The price, did you disclose the price to</p> <p>7 your customers?</p> <p>8 A Yes.</p> <p>9 Q And did you disclose what products you</p> <p>10 were selling to the customers that you dealt with?</p> <p>11 A Yes.</p> <p>12 Q But if I understand your testimony, you</p> <p>13 would not use the menu system?</p> <p>14 A Correct.</p> <p>15 Q And --</p> <p>16 A Well, let me back that up. I did use it</p> <p>17 occasionally when I was forced to. I don't agree</p> <p>18 with the menu. I think it's deceptive.</p> <p>19 Q Is this the menu that was designed by</p> <p>20 JM&A?</p> <p>21 A I don't know who it was designed by. It</p> <p>22 was implemented by Venice Dodge Nissan. I would</p> <p>23 assume it was designed by JM&A.</p> <p>24 Q Well, did you ever work with JM&A at</p> <p>25 Venice Dodge Nissan?</p>	<p style="text-align: center;">88</p> <p>1 Q Do they also provide compliance auditing</p> <p>2 for dealerships?</p> <p>3 A Yes.</p> <p>4 Q Do they have a good reputation or a bad</p> <p>5 reputation in the industry for compliance?</p> <p>6 A It depends on who you ask.</p> <p>7 Q I guess I'm asking Carlo Bell.</p> <p>8 A No, I don't think they have a good</p> <p>9 reputation.</p> <p>10 Q So you don't think that Jim Moran &</p> <p>11 Associates has a good reputation for compliance?</p> <p>12 A No.</p> <p>13 Q And what do you base that on?</p> <p>14 A I base that on they put one thing in</p> <p>15 writing and then they tell you verbally something</p> <p>16 completely different.</p> <p>17 Q For example?</p> <p>18 A For example, car cares, maintenance</p> <p>19 policies. In writing they'll tell you that</p> <p>20 they're supposed to be disclosed and the price is</p> <p>21 supposed to be kept at a certain amount. Verbally</p> <p>22 when a JM&A rep comes into a dealership and talks</p> <p>23 to finance managers, that's not what you get.</p> <p>24 Q What is the name of that rep?</p> <p>25 A Mark Swanson. The two rep that we had</p>



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<p style="text-align: center;">89</p> <p>1 were Mark and I forgot the other one. Ron</p> <p>2 Zubarski (phonetic).</p> <p>3 Q And what is your sworn testimony again as</p> <p>4 to what they would tell you with regards to car</p> <p>5 care?</p> <p>6 A Jam it, get as much as you can for it.</p> <p>7 Q How often --</p> <p>8 A Add it to the price of the warranty when</p> <p>9 you disclose a payment to a customer.</p> <p>10 Q Are you done?</p> <p>11 A Yeah, I'm done.</p> <p>12 Q I didn't want to interrupt you.</p> <p>13 A Oh, no, I'm good.</p> <p>14 Q How often did they tell you that?</p> <p>15 A Regularly.</p> <p>16 Q And define regularly for me.</p> <p>17 A Just about every visit, and they would</p> <p>18 come by about once a month.</p> <p>19 Q So if I understand -- did they tell you to</p> <p>20 do anything else that you thought was wrong, JM&A?</p> <p>21 A Use the menu.</p> <p>22 Q Anything else?</p> <p>23 A Those are the two that come to mind</p> <p>24 immediately.</p> <p>25 Q So on every visit that JM&A made to the</p>	<p style="text-align: center;">91</p> <p>1 them why.</p> <p>2 Q Did they advise you, they being</p> <p>3 Mr. Curtsinger or Mr. Caldwell, that they wished</p> <p>4 you to use the menu?</p> <p>5 A Yes.</p> <p>6 Q And you refused?</p> <p>7 A For a long time, yes.</p> <p>8 Q How many dealerships percentage-wise do</p> <p>9 you think use a menu?</p> <p>10 A I have no idea.</p> <p>11 Q Do you think the majority of dealerships</p> <p>12 use a menu?</p> <p>13 A I couldn't tell you. I don't know.</p> <p>14 Q Did you use menus at any other dealership</p> <p>15 that you worked at?</p> <p>16 A Yes.</p> <p>17 Q Which dealerships, please?</p> <p>18 A Douglas Jeep, and I think that's it.</p> <p>19 Q What about Honda?</p> <p>20 A No, I don't think we did. I don't</p> <p>21 remember using a menu in Honda.</p> <p>22 Q What about Gettel?</p> <p>23 A Did we use a menu at Gettel? We might</p> <p>24 have at Gettel. I don't remember, to be honest</p> <p>25 with you.</p>
<p style="text-align: center;">90</p> <p>1 dealership, they asked you to jam car care?</p> <p>2 A Every visit? No. Most visits.</p> <p>3 Q The majority of the visits?</p> <p>4 A Yes.</p> <p>5 Q It says that every finance manager -- this</p> <p>6 is Exhibit 1 -- every finance manager is required</p> <p>7 to file all Florida statutes for disclosure.</p> <p>8 Did you?</p> <p>9 A Yes.</p> <p>10 Q When you were the F&I director did you</p> <p>11 follow the Florida statutes?</p> <p>12 A Yes.</p> <p>13 Q In 2006 who were the F&I managers that</p> <p>14 worked with you?</p> <p>15 A Jason Martin, Brad Combs, DJ Padilla, and</p> <p>16 there was a JM&A rep that worked in the store but</p> <p>17 I don't remember when exactly he left.</p> <p>18 Q Was Jason Martin in F&I in 2006?</p> <p>19 A Yes, I believe so.</p> <p>20 Q And when you promised in this agreement</p> <p>21 that the menu is to be offered a hundred percent</p> <p>22 of the time to 100 percent of the customers, you</p> <p>23 didn't do that?</p> <p>24 A I didn't promise that. I told them that I</p> <p>25 didn't want to use the menu repeatedly and I told</p>	<p style="text-align: center;">92</p> <p>1 Q If I understand your testimony you were</p> <p>2 allowed to continue your employment without using</p> <p>3 the menu?</p> <p>4 A Correct.</p> <p>5 Q And for how many years were you allowed to</p> <p>6 continue your employment without using the menu?</p> <p>7 A Two or three.</p> <p>8 Q You didn't get fired from Venice Dodge</p> <p>9 Nissan; correct?</p> <p>10 A For not using the menu?</p> <p>11 Q Well, you didn't get fired period was my</p> <p>12 question?</p> <p>13 A No.</p> <p>14 Q You quit; correct?</p> <p>15 A Yes.</p> <p>16 Q And you quit after getting written up;</p> <p>17 correct?</p> <p>18 A I quit at that time. It wasn't for being</p> <p>19 written up. That was just the last straw in a</p> <p>20 series of countless things that happened.</p> <p>21 Q Well, what were the countless things that</p> <p>22 happened?</p> <p>23 A I think we have already covered that.</p> <p>24 Q So that's the universe of countless things</p> <p>25 that have happened?</p>



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<p style="text-align: center;">93</p> <p>1 A They are the questions that you asked me 2 before, power hooking, invoices, deducting pay 3 stubs, and the verbal abuse that I took from Don 4 Caldwell for three years. 5 Q And what verbal abuse did you take from 6 Don Caldwell for three years? 7 A Continual beration. 8 Q Okay. Tell me how often it would occur. 9 A Two or three times a month at least. 10 Q What year did this begin? 11 A '03. 12 Q '03? 13 A '03 or '04. 14 Q Did it occur in '04? 15 A Yes. 16 Q Do you know if it occurred in '03? 17 A I'm pretty sure it did. That's about when 18 I started complaining and that's coincidentally 19 when it started. 20 Q So you would get berated two or three 21 times a month? 22 A At least. 23 Q Well, I need to know because it is part of 24 your lawsuit how often you got berated by Don 25 Caldwell?</p>	<p style="text-align: center;">95</p> <p>1 you left Venice Dodge Nissan? 2 A That's a great question. I did that 3 because I interviewed at Douglas Jeep and in the 4 course of the interview at Douglas Jeep I was told 5 that, the person that I was going through the 6 interview with said that they had heard that I had 7 forged the customer's signature, Jeffrey Sutton. 8 I finished the interview, and when I left 9 I called Shelby Cutsinger and I told him what had 10 happened. I was quite upset about it. After a 11 few minutes of conversation with him I then got a 12 phone call from Don Caldwell and Don said, (Don 13 knew that I was interviewing for the job at 14 Douglas Jeep and he guaranteed me that I could get 15 that job. 16 I was yelling at him because I was angry 17 about being told in an interview about being told 18 that I had signed somebody's signature, forged 19 somebody's signature, Jeffrey Sutton's. And Don 20 said, I can guarantee you that job because they 21 know Greg Douglas. He said do you want that job, 22 I can get it for you. And I was also told by Don 23 before that and Shelby that I could use them as 24 references to apply for another job. 25 Q So if I understand your testimony</p>
<p style="text-align: center;">94</p> <p>1 A At least two or three times a month. And 2 I complained about that as well to Shelby 3 Cutsinger, and nothing would come of it. It just 4 continued on and on. 5 Q Did people ever complain about you 6 berating them? 7 A Not that I'm aware of. 8 Q What did Don Caldwell berate you about? 9 A Everything. 10 Q I don't know what everything means. 11 A Everything means everything. 12 Q Would he berate you about your haircut? 13 A He berated me about complaining. The more 14 I complained, the worse it got. And it got to a 15 point where it was just impossible to work there 16 and that's why I left, directly because of him. 17 Q Did you ever tell him that you left 18 because of him? 19 A I think he knew that. I'm certain he knew 20 it, actually. 21 Q Why did you use Don Caldwell, a man who 22 had berated you, according to your testimony, -- 23 A That's a great question. 24 Q -- four times a month for years as a 25 reference in two jobs that you applied for after</p>	<p style="text-align: center;">96</p> <p>1 correctly, you used Shelby Cutsinger and Don 2 Caldwell as a reference at the Jeep store because 3 something came up about Sutton? 4 A No. I was told originally that when I 5 left that I could use them as references. And 6 then I was told after having a conversation with 7 somebody and being told that I had forged 8 somebody's signature, they had heard that I forged 9 somebody's signature, I was told by Don Caldwell 10 that he could guarantee that I would get that job 11 because they know Greg Douglas socially, which 12 leads me to believe they just wanted to keep me 13 quiet about the Jeffrey Sutton deal. 14 Q Well, you never testified, did you, that 15 you forged Mr. Sutton's signature? 16 A No, I did not, but I believe your clients 17 did. 18 Q Did you forge Mr. Sutton's signature? 19 A No, I did not. 20 Q Did you ever hear Shelby say that you 21 forged Mr. Sutton's signature? 22 A I believe Shelby testified that if anybody 23 had forged the signature it had to be me. 24 Q And when did he testify to that? 25 A In his deposition.</p>

<p style="text-align: center;">97</p> <p>1 Q Did you read that testimony?</p> <p>2 A No.</p> <p>3 Q Did you ever hear Don Caldwell say that</p> <p>4 you forged Mr. Sutton's signature?</p> <p>5 A He accused me in so many words, yes. And</p> <p>6 he knew that it wasn't me.</p> <p>7 Q And when did he accuse you of that?</p> <p>8 A Several times after the Sutton case came</p> <p>9 up.</p> <p>10 Q Where did you go after you left Venice</p> <p>11 Dodge?</p> <p>12 A Honda Cars of Bradenton.</p> <p>13 Q And it may be stating the obvious, but you</p> <p>14 went there before you went to the Jeep store; --</p> <p>15 A Yes.</p> <p>16 Q -- true?</p> <p>17 A Yes, I was there for two or three weeks.</p> <p>18 Q And did they ask you about Sutton?</p> <p>19 A No.</p> <p>20 Q Do you know why you used Shelby Curtsinger</p> <p>21 and Don Caldwell as references at the Honda store?</p> <p>22 A As I said, they told me that I could use</p> <p>23 them as references. And I interpret that as</p> <p>24 giving me a reference to keep my mouth shut about</p> <p>25 Jeffrey Sutton.</p>	<p style="text-align: center;">99</p> <p>1 that conversation several times.</p> <p>2 Q Well, when you first got in the</p> <p>3 dealership, Venice Dodge Nissan, was the computer</p> <p>4 system showing the information correctly or</p> <p>5 incorrectly?</p> <p>6 A Incorrectly.</p> <p>7 Q And that was from the very beginning?</p> <p>8 A Yes.</p> <p>9 Q And if I understand your complaint, first</p> <p>10 amended complaint, you complained about that?</p> <p>11 A Yes.</p> <p>12 Q Who did you complain to?</p> <p>13 A Don and Shelby.</p> <p>14 Q What did you say?</p> <p>15 A I said they weren't disclosing products</p> <p>16 properly, they were putting them into line 1 of</p> <p>17 the contract.</p> <p>18 Q Did that ultimately get fixed?</p> <p>19 A Yes.</p> <p>20 Q How long did it take to get fixed?</p> <p>21 A I don't remember specifically. Probably a</p> <p>22 couple of years. I don't remember an exact, the</p> <p>23 exact time. It was probably somewhere between a</p> <p>24 year and two years.</p> <p>25 Q You started working in December of 2001;</p>
<p style="text-align: center;">98</p> <p>1 Q So when you were given the choice of three</p> <p>2 references, two of those references were Shelby</p> <p>3 Curtsinger and Don Caldwell; correct?</p> <p>4 A Yes.</p> <p>5 Q And that was after Don Caldwell had</p> <p>6 berated you four times a month for six years?</p> <p>7 A Yes. Because Don told me that he would</p> <p>8 give me a good reference, and so did Shelby.</p> <p>9 Q Did they?</p> <p>10 A As far as I know, I don't know.</p> <p>11 Q Did you ever ask Mr. Douglas if he would</p> <p>12 testify as to whether or not he called Shelby</p> <p>13 Curtsinger to get a reference?</p> <p>14 A Yes.</p> <p>15 Q And did he not say he wouldn't do that</p> <p>16 because it didn't occur?</p> <p>17 A No. He said he didn't want to get</p> <p>18 involved in it because he's personal friends with</p> <p>19 Shelby Curtsinger.</p> <p>20 Q Now, you talked about a computer issue</p> <p>21 about certain things not being able to be shown, I</p> <p>22 guess, on the retail installment contract?</p> <p>23 A Yes.</p> <p>24 Q Okay. When was that?</p> <p>25 A When did I have that conversation? I had</p>	<p style="text-align: center;">100</p> <p>1 true?</p> <p>2 A Yes.</p> <p>3 Q So the latest it would have been fixed</p> <p>4 would have been some time in 2004; correct?</p> <p>5 A Yes.</p> <p>6 Q And it might have been as early as 2002?</p> <p>7 A It was either '03 or '04 that the</p> <p>8 corrections were made.</p> <p>9 Q How was it that the dealership was able to</p> <p>10 fix the issue?</p> <p>11 A I'm sure they contacted Reynolds &</p> <p>12 Reynolds and had it fixed, or I contacted them.</p> <p>13 One or the other. Either they gave me permission</p> <p>14 to do it and I did, one or the other.</p> <p>15 Q So either they did it or they allowed you</p> <p>16 to fix that problem?</p> <p>17 A Correct.</p> <p>18 Q You did not advise Mr. Buchanan of that</p> <p>19 issue; did you?</p> <p>20 A No, I did not.</p> <p>21 Q You did not advise Mr. Touch of that</p> <p>22 issue; correct?</p> <p>23 A Correct.</p> <p>24 Q You did not advise anybody of the Buchanan</p> <p>25 corporate offices; correct?</p>



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<p style="text-align: center;">101</p> <p>1 A That's correct.</p> <p>2 Q You did not advise any government entity;</p> <p>3 true?</p> <p>4 A Correct.</p> <p>5 Q And you didn't document any complaint in</p> <p>6 writing; true?</p> <p>7 A Correct.</p> <p>8 Q And, in fact, the problem was fixed at</p> <p>9 least by 2004; correct?</p> <p>10 A Yes.</p> <p>11 Q Do you know what Reynolds & Reynolds was</p> <p>12 required to do to fix the system?</p> <p>13 A No.</p> <p>14 Q Do you know how long it took Reynolds &</p> <p>15 Reynolds upon being told to fix the system?</p> <p>16 A Probably a relatively short amount of</p> <p>17 time. A day, two at most.</p> <p>18 Q Your complaint says that you pled for it</p> <p>19 to be fixed?</p> <p>20 A Yes.</p> <p>21 Q What do you mean by that?</p> <p>22 A I asked them repeatedly to fix it.</p> <p>23 Q There is a difference between a plea and</p> <p>24 asking to me. So I guess I have to ask you what</p> <p>25 do you mean by plea?</p>	<p style="text-align: center;">103</p> <p>1 and then Brad.</p> <p>2 Q But if I understand --</p> <p>3 A All three of us are aware that they</p> <p>4 weren't disclosing properly.</p> <p>5 Q And if I understand your testimony, the</p> <p>6 only people that witnessed your pleas were either</p> <p>7 Don Caldwell or Shelby Curtsinger; correct?</p> <p>8 A Yes. Jason and Brad might have been in</p> <p>9 the room. I don't remember specifically. They</p> <p>10 might have been in my office if it happened in my</p> <p>11 office. They might have been in there with me.</p> <p>12 Q Do you have any recollection of that?</p> <p>13 A Specifically, no.</p> <p>14 Q Your complaint says JM&A loaned defendant</p> <p>15 Buchanan \$3 million.</p> <p>16 Do you know that?</p> <p>17 A That's what I was told.</p> <p>18 Q Who were you told that by?</p> <p>19 A Sal Rosa.</p> <p>20 Q Sal Rosa. When did you talk to Sal Rosa?</p> <p>21 A Last year, a couple of times this year.</p> <p>22 Q Okay. Did Sal Rosa work for the Buchanan</p> <p>23 organization when you were at Venice Dodge Nissan?</p> <p>24 A I believe so.</p> <p>25 Q When did Sal Rosa work there?</p>
<p style="text-align: center;">102</p> <p>1 A If you ask repeatedly it turns into a</p> <p>2 plea.</p> <p>3 Q So your definition of a plea is being</p> <p>4 asked repeatedly?</p> <p>5 A Yeah. If you ask somebody several times</p> <p>6 the same question, after the third or fourth time</p> <p>7 it becomes a plea.</p> <p>8 Q So if you ask somebody, just so I</p> <p>9 understand your testimony or your allegations in</p> <p>10 your complaint, that if you ask somebody to do</p> <p>11 something on the fourth or fifth time it becomes a</p> <p>12 plea?</p> <p>13 A Yes.</p> <p>14 Q And by plea you weren't down on your knees</p> <p>15 pleading, you just asked a lot?</p> <p>16 A Yes.</p> <p>17 Q Do you know how many times you asked?</p> <p>18 A Several times.</p> <p>19 Q Who else witnessed this?</p> <p>20 A Just Don and Shelby.</p> <p>21 Q So there were no other witnesses --</p> <p>22 A And there were discussions with the</p> <p>23 finance managers.</p> <p>24 Q Which ones?</p> <p>25 A At that point it was Jason Martin, Jason</p>	<p style="text-align: center;">104</p> <p>1 A Are you asking me?</p> <p>2 Q Yes.</p> <p>3 A I don't know specifically.</p> <p>4 Q For the entire time we're sitting here,</p> <p>5 unless I say otherwise, I will always be asking</p> <p>6 you questions.</p> <p>7 A I don't know specifically what days he</p> <p>8 worked there, what dates he worked there.</p> <p>9 Q How many times last year did you talk to</p> <p>10 Sal Rosa?</p> <p>11 A Two or three times.</p> <p>12 Q And how many times this year did you talk</p> <p>13 to Sal Rosa?</p> <p>14 A A couple of times.</p> <p>15 Q Prior to the time you filed your lawsuit,</p> <p>16 had you ever talked to Sal Rosa before?</p> <p>17 A About the lawsuit? No.</p> <p>18 Q About anything.</p> <p>19 A I think so. I think I might have met him</p> <p>20 once or twice. I don't recall. I don't recollect</p> <p>21 specifically.</p> <p>22 Q Prior to your filing your lawsuit, do you</p> <p>23 recall talking to Sal Rosa?</p> <p>24 A No.</p> <p>25 Q What is the first time last year you spoke</p>



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1 with Sal Rosa?
 2 A Maybe August or September. I don't
 3 remember the specific date. It was in like last
 4 year.
 5 Q And did you call him or did he call you?
 6 A I don't remember that either.
 7 Q In that first - what phone were you
 8 speaking on?
 9 A Either my cell phone or work phone.
 10 Q Your work phone where?
 11 A Down the street.
 12 Q How long did that first conversation last?
 13 A Oh, gosh, I don't know. A few minutes. I
 14 don't remember.
 15 Q What did he say to you and you say to him?
 16 A I don't recall the exact conversation,
 17 what specifically was said.
 18 Q Was this before you filed a lawsuit?
 19 A No.
 20 Q It was after you filed your lawsuit?
 21 A I believe so.
 22 Q And you can't remember a single part of
 23 that conversation?
 24 A I'm sure we talked about the lawsuit and
 25 about Vern Buchanan, but specifically, no.

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1 Q Did you talk about a \$3 million loan?
 2 A I remember him telling me that Buchanan
 3 borrowed money from JM&A and paid it back by
 4 charging back dealers.
 5 Q What JM&A charge backs are you aware of at
 6 Venice Dodge Nissan?
 7 A I'm aware of the charge backs from the
 8 dealership to banks and to JM&A.
 9 Q And which - what was the subject matter?
 10 Why would you have a charge back from JM&A?
 11 A A canceled warranty.
 12 Q Is that the only reason?
 13 A Any canceled policy.
 14 Q Did you ever see any evidence what so ever
 15 that the charge backs for canceled warranty
 16 products or service mistakes were anything but
 17 genuine when you were at Venice Dodge Nissan?
 18 A No, they wouldn't let me see them.
 19 Q You never had the ability to go to Tina
 20 Hires (phonetic) and see what was charged back?
 21 A I asked Tina more than once. I asked her
 22 multiple times to show me specifically what the
 23 charge backs were. And she would give me, I don't
 24 know even know what to describe it, but it had
 25 nothing to do with charge backs. And I would go

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1 to Shelby and he would say go back to Tina. And
 2 after a while I just stopped asking just because I
 3 got the runaround.
 4 Q Would you try to describe for me what Tina
 5 would show you?
 6 A They were adds and deductions. I'm not an
 7 accountant so I don't know what it was called, but
 8 it wasn't in any way understandable for me. I
 9 didn't understand what it said. I asked Tina to
 10 explain it to me and she wouldn't explain it to me
 11 and say she didn't have time. She would put me
 12 off. And I would come back later and she just
 13 wouldn't explain it.
 14 Q Do you have any personal knowledge what so
 15 ever that any charge back from JM&A with regards
 16 to its products were less than genuine?
 17 A Less than genuine? I don't know. Because
 18 any time I asked for an accounting I was never
 19 given one.
 20 Q Your second conversation with Sal Rosa,
 21 did that occur last year? You said you had two or
 22 three last year.
 23 A Yeah, yes.
 24 Q Okay. When did the second conversation
 25 occur?

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1 A Late last year, I don't know the specific
 2 date.
 3 Q What did he say to you and you say to Sal?
 4 A Again, I don't remember specific
 5 conversation. Just that in general about Venice
 6 Nissan Dodge, Vern Buchanan, we talked about the
 7 car business in general. You know, I don't
 8 remember specifics other than those.
 9 Q Did Mr. Rosa make any specific allegations
 10 with regards to Mr. Buchanan?
 11 A The only thing he said was about the
 12 charge backs and the borrowing of money from JM&A
 13 and charging back the dealers to pay back the
 14 loan.
 15 Q Do you know if you had a third
 16 conversation with Sal Rosa last year?
 17 A Again, I don't remember the exact number
 18 of conversations I had with him.
 19 Q Okay. How many conversations did you have
 20 with Sal Rosa this year?
 21 A One or two.
 22 Q When was the first conversation you had
 23 with Mr. Rosa this year?
 24 A I don't remember the exact date.
 25 Q What did he say to you and what did you



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<p style="text-align: center;">109</p> <p>1 say to him?</p> <p>2 A Again, it was just a general conversation.</p> <p>3 I don't remember specifically what was said.</p> <p>4 Q Did Mr. Rosa ever suggest how you should</p> <p>5 answer your questions under oath?</p> <p>6 A No, absolutely not.</p> <p>7 Q When is the last time you spoke to</p> <p>8 Mr. Rosa?</p> <p>9 A About a month ago.</p> <p>10 Q That was a month ago, so do you remember</p> <p>11 any of that conversation?</p> <p>12 A No. Just, again, just in general, it</p> <p>13 wasn't about anything specific, just how things</p> <p>14 were going. And I asked him about his job, where</p> <p>15 he was working, his family.</p> <p>16 Q Where is he working?</p> <p>17 A He is doing, I think he's doing CPA work</p> <p>18 somewhere. And he's working for a dealer group.</p> <p>19 He told me the name of the store but I don't</p> <p>20 remember.</p> <p>21 Q Do you remember what city it was in?</p> <p>22 A No.</p> <p>23 Q Have you ever had occasion to have</p> <p>24 conversations with Dwayne Overhalt (phonetic)?</p> <p>25 A Yes.</p>	<p style="text-align: center;">111</p> <p>1 with regards to donations is no longer an issue in</p> <p>2 your complaint; correct?</p> <p>3 A I believe so.</p> <p>4 Q So you are no longer complaining about</p> <p>5 that in this lawsuit; correct?</p> <p>6 A In the lawsuit?</p> <p>7 Q Yes.</p> <p>8 A Correct.</p> <p>9 Q Did Mr. Overhalt ever give you any</p> <p>10 documents?</p> <p>11 A No.</p> <p>12 Q Have you ever given Mr. Overhalt any</p> <p>13 documents?</p> <p>14 A No.</p> <p>15 Q When you left Venice Dodge Nissan did you</p> <p>16 leave with any documents?</p> <p>17 A No.</p> <p>18 Q Did Mr. Overhalt ever suggest to you how</p> <p>19 you should answer your questions?</p> <p>20 A Never.</p> <p>21 Q Did Mr. Overhalt ever role play with you?</p> <p>22 A No.</p> <p>23 Q Did Mr. Overhalt ever make allegations</p> <p>24 with regards to Mr. Buchanan?</p> <p>25 A I don't think it was an allegation. It</p>
<p style="text-align: center;">110</p> <p>1 Q When did you have your first conversation</p> <p>2 with Mr. Overhalt?</p> <p>3 A Late last year.</p> <p>4 Q Did he call you or did you call him?</p> <p>5 A I called him.</p> <p>6 Q Did you call him before or after you filed</p> <p>7 your lawsuit against Venice Dodge Nissan and</p> <p>8 others?</p> <p>9 A Before.</p> <p>10 Q How long did that conversation last?</p> <p>11 A Oh, gosh, I don't know.</p> <p>12 Q Did it last hours?</p> <p>13 A No, no, no. Ten or 15 minutes.</p> <p>14 Q And what did he say to you and you say to</p> <p>15 him?</p> <p>16 A That conversation was mostly about Jeff</p> <p>17 Sutton and the donations to the Buchanans,</p> <p>18 Congressman Buchanan's campaign fund, and being</p> <p>19 reimbursed for the donations.</p> <p>20 Q Did he ask you about those or did you tell</p> <p>21 him about those?</p> <p>22 A I don't remember. I just know that we</p> <p>23 talked about it. I don't know if he volunteered</p> <p>24 or he asked.</p> <p>25 Q And if I understand correctly, the issue</p>	<p style="text-align: center;">112</p> <p>1 was more of, you know, he didn't understand how</p> <p>2 the guy could continue doing business the way he</p> <p>3 was and get away with it.</p> <p>4 Q And how did he say that Mr. Buchanan was</p> <p>5 doing business?</p> <p>6 A Unethically.</p> <p>7 Q And did he give you any specific examples?</p> <p>8 A I don't think so.</p> <p>9 Q Did you question him as to what he meant</p> <p>10 by unethical?</p> <p>11 A No.</p> <p>12 Q How many conversations have you ever had</p> <p>13 with Mr. Buchanan?</p> <p>14 A Two or three.</p> <p>15 MR. LYONS: I'm sorry; with who?</p> <p>16 THE WITNESS: Mr. Buchanan.</p> <p>17 MR. LYONS: Okay. Thanks.</p> <p>18 BY MR. ORNSTEIN:</p> <p>19 Q And were they with regards to the business</p> <p>20 practices of his dealerships?</p> <p>21 A No.</p> <p>22 MR. ORNSTEIN: Doug, it's a quarter</p> <p>23 to one. We're going to run to lunch.</p> <p>24 MR. LYONS: How long do you want to</p> <p>25 take?</p>



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1 MR. ORNSTEIN: Let's say a quarter to
2 two.

3 MR. LYONS: An hour, you're going to
4 take an hour for lunch? Okay. All right.
5 Call me back at a quarter to two, or
6 whenever they get back.

7 [Lunch recess was taken from 12:45
8 p.m. until 1:46 p.m.]

9 BY MR. ORNSTEIN:

10 Q Do you remember what the day of the week
11 was that you quit? I think it was a Thursday or
12 Friday.

13 A I don't recall.

14 Q On the Monday after you quit, did you
15 still have your Nextel phone from the firm -- from
16 the dealership?

17 A Um, I don't know.

18 Q Did you call Shelby Curtsinger on that
19 Monday with that phone?

20 A I don't remember.

21 Q Did you call Dan Calliswell on that phone?

22 A Again, I don't remember.

23 Q Did you call Brad Combs on that phone?

24 A I don't remember.

25 Q Did you call Jason Martin on that phone?

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1 A I don't recall.

2 Q Did you call Jack Prater on that phone?

3 A Again, I don't recall.

4 Q If there is a phone record of you calling
5 those numbers on that Nextel phone, would you know
6 why you would be calling those gentlemen?

7 A I have no idea.

8 Q And if I understand your testimony it was
9 not to ask for your job back; is that correct?

10 A No. Yes, correct.

11 Q Before we broke we were talking about
12 conversations that you had with Dwayne Overhalt, I
13 think -- and, correct me if I ever -- I capsuleize
14 things so I can make things quicker. If I

15 capsuleize it incorrectly, correct me. But if my
16 understanding of your testimony is correct, last
17 year you talked to Dwayne Overhalt several times
18 but you don't remember the content of what you
19 talked about except for the fact that he made a
20 comment with regards to Mr. Buchanan's business
21 practices?

22 A Yeah, I mean, I don't remember
23 specifically what we talked about. I'm sure we
24 talked about Buchanan, Congressman Buchanan, and I
25 don't know, the car business in general. I don't

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1 remember specifically what we talked about.

2 Q Did he ever give you any suggestions of
3 what you should do in your lawsuit?

4 A No.

5 Q Did he share with you anything he had
6 discovered with regards to the Buchanan
7 organization last year?

8 A I don't think so.

9 Q Did he tell you that he was working with
10 any other people who were bringing lawsuits
11 against Mr. Buchanan?

12 A I think he mentioned Joe Kaiser
13 (phonetic).

14 Q Did he mention anybody else to you?

15 A I don't think so, not that I recall.

16 Q This year -- let me back up.

17 Have we talked about whatever
18 conversations you would have had with Dwayne
19 Overhalt last year?

20 A I'm sorry; say that again.

21 Q Have we covered all the conversations that
22 you think you may have had with Mr. Overhalt last
23 year?

24 A As far as I remember.

25 Q Okay. Do you remember having any

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1 conversations with Mr. Overhalt this year?

2 A I might have spoken to him once or twice
3 early in the year.

4 Q Do you know what you spoke about?

5 A I think we spoke about Bill Brooks.

6 Q What did you talk about Bill Brooks?

7 A Just that Bill is suing you for
8 malpractice.

9 Q Did you talk about anything else?

10 A No, I think that was about it.

11 Q And, of course, you worked at
12 St. Augustine Toyota with Mr. Brooks?

13 A Uh-huh.

14 Q What else did you speak about?

15 A I think that was it that I can remember.

16 Q That's it?

17 A I think so, as far as I can remember.

18 Q Did you ever get disciplined for looking
19 at pornography at the dealership?

20 A Yes.

21 Q What happened with that?

22 A I got written up.

23 Q Were you looking at pornography at the
24 dealership?

25 A Everybody was looking at pornography at



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1 the dealership.
 2 Q Were you looking at pornography at the
 3 dealership?
 4 A Yes.
 5 Q Should you have been written up?
 6 A I think that if I was written up,
 7 everybody else should have been written up. So,
 8 no, is the answer to your question.
 9 Q Were they all looking at it on your
 10 computer?
 11 A No.
 12 Q Were you looking at it on your computer?
 13 A Yes, I already answered that.
 14 Q You said you were looking at it, you
 15 didn't say which computer you were looking at it.
 16 What other conversations have you had with
 17 Dwayne Overhalt?
 18 A I think that's it.
 19 Q What conversations, if any, have you had
 20 with Joe Keiser?
 21 A Um, we speak every couple of months,
 22 maybe.
 23 Q Where is Mr. Keiser working now?
 24 A I don't know.
 25 Q Is he doing off-site sales out west?

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1 A I heard he was doing that but that was
 2 several months ago, maybe six months ago.
 3 Q Has anybody ever offered you money with
 4 regards to how you might testify in a case --
 5 A Never.
 6 Q -- regarding Mr. Buchanan?
 7 A Never.
 8 Q Has anybody ever offered you money with
 9 regards to testimony with regards to a case
 10 regarding Venice?
 11 A No.
 12 Q There is a section in your complaint
 13 regarding after-market products. And it states:
 14 Instead of allocating the actual cost of these
 15 products to the dealership in its internal
 16 accounting, Defendant, 1099, would allocate an
 17 excessive cost which excess amount would be paid
 18 back to 1099 by JM&A and then deposited into an
 19 offshore tax exempt account on behalf of the
 20 defendants Buchanan, Curtsinger and Caldwell and
 21 their entity partners.
 22 A Correct.
 23 Q What do you know about that?
 24 A Just from what Shelby told me and JM&A
 25 told me, Swanson specifically.

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1 Q What did Shelby tell you?
 2 A That the cost we were using wasn't the
 3 actual cost, that there was money kicked back to
 4 the dealer.
 5 Q Do you know if Shelby, Don, or
 6 Mr. Buchanan has created their own reinsurance
 7 company?
 8 A That's what they told me, yeah.
 9 Q Are you aware of any other dealers that
 10 have created other reinsurance programs?
 11 A I wouldn't know.
 12 Q You never heard that having happened at
 13 other dealerships?
 14 A I heard of it. I thought you meant
 15 specific knowledge.
 16 Q Are you aware of any other dealers using
 17 that program?
 18 A Again, from what I heard, just hearsay. I
 19 don't know specifically of any that do or don't.
 20 Q Did Mr. Gertel use that program?
 21 A I couldn't tell you.
 22 Q So you're not -- did Mr. Brooks use that
 23 program?
 24 A I couldn't tell you that either.
 25 Q When you discussed this issue with JM&A,

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1 specifically who?
 2 A Mark Swanson.
 3 Q Did Mark Swanson say that this was a
 4 program specifically designed for Venice Dodge
 5 Nissan or was this a program that was offered to
 6 other dealers?
 7 A As I understand it, the programs are
 8 tailored to each individual dealer. The dealer
 9 decides how much they get back. It's up to the
 10 dealer's discretion.
 11 Q Well, the charge that, the amount of money
 12 charged the consumer for the insurance product is
 13 filed with Tallahassee; correct?
 14 A Yes.
 15 Q And the amount that the dealership is
 16 charged is also filed with Tallahassee; isn't that
 17 true?
 18 A I would assume so.
 19 Q And your pay plan was based upon the
 20 spread for what the dealership was charged and
 21 what the customer was charged; correct?
 22 A Yes, but there is an internal cost that
 23 the employees don't get paid on that gets kicked
 24 back to the dealer.
 25 Q Does the money just go to the dealer or



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<p style="text-align: center;">121</p> <p>1 does it go to the reinsurance company?</p> <p>2 A I believe it goes to the reinsurance</p> <p>3 company which is owned by the dealer.</p> <p>4 Q And is that money used for any purpose</p> <p>5 such as paying claims?</p> <p>6 A That's a different account, as I</p> <p>7 understand it.</p> <p>8 Q So as you understand it that's a different</p> <p>9 account?</p> <p>10 A As I understand it.</p> <p>11 Q And if it's not a different account, does</p> <p>12 that change any of the allegations in your</p> <p>13 complaint?</p> <p>14 A Whatever monies are leftover go into the</p> <p>15 dealer's pocket and the employees don't get paid</p> <p>16 on it.</p> <p>17 Q Do you know if the charge that the</p> <p>18 dealership paid for the product, not the amount</p> <p>19 the customer was paid, is greater than or less</p> <p>20 than what JM&A charges dealers who don't have</p> <p>21 reinsurance?</p> <p>22 A I don't know.</p> <p>23 Q When did you discover when you were at</p> <p>24 Venice Dodge Nissan that the members might have</p> <p>25 reinsurance companies?</p>	<p style="text-align: center;">123</p> <p>1 was being charged; correct?</p> <p>2 A I knew that I was supposed to be paid on</p> <p>3 the total profit of the department.</p> <p>4 Q Wait a second. Let me see if I understand</p> <p>5 your testimony correctly.</p> <p>6 A Okay.</p> <p>7 Q You knew early on that the members of</p> <p>8 Venice Dodge Nissan had reinsurance companies;</p> <p>9 correct?</p> <p>10 A Yeah, I say early on. I don't know</p> <p>11 specifically when it was. But at some point, yes,</p> <p>12 I was made aware of that.</p> <p>13 Q Was it before 2004?</p> <p>14 A I don't know.</p> <p>15 Q And you were explained the program by</p> <p>16 somebody from JM&A; correct? His name was, I'm</p> <p>17 sorry?</p> <p>18 A Mark Swanson told me it existed. He</p> <p>19 didn't give me any details what the dollar amounts</p> <p>20 were.</p> <p>21 Q And, in fact, if I understand your</p> <p>22 testimony, Shelby Curtinger told you about it as</p> <p>23 well?</p> <p>24 A Yes.</p> <p>25 Q When did he tell you about it?</p>
<p style="text-align: center;">122</p> <p>1 A Early on.</p> <p>2 Q And you knew early on, did you not, that</p> <p>3 you were paid on a spread on the amount that the</p> <p>4 dealership was charged or showing charged on your</p> <p>5 pay plan, and the spread for what the customer was</p> <p>6 charged; correct?</p> <p>7 A I think the issue is that the cost that</p> <p>8 was charged to the finance managers was higher</p> <p>9 than the actual cost to the dealer. That's the</p> <p>10 issue in that part of the complaint. There were</p> <p>11 profits that the dealer has, collects, that the</p> <p>12 finance department and the sales department</p> <p>13 doesn't get paid on. That's the point.</p> <p>14 Q You knew when you worked at Venice Dodge</p> <p>15 Nissan, did you not, what the price the dealership</p> <p>16 was being charged as you receive monthly in a</p> <p>17 written memo from JM&A that benchmark number and</p> <p>18 the price the customer is being charged; correct?</p> <p>19 A I know what the department was charged. I</p> <p>20 don't know what the dealer was charged. That</p> <p>21 difference is the point of that part of the</p> <p>22 complaint.</p> <p>23 Q And you knew that you were being paid the</p> <p>24 spread, a percentage of the spread, from when the</p> <p>25 department was being charged and what the customer</p>	<p style="text-align: center;">124</p> <p>1 A I don't remember a specific date. I</p> <p>2 couldn't tell you.</p> <p>3 Q Can you tell me the specific year?</p> <p>4 A It was probably '03 or '04.</p> <p>5 Q And did he try to hide from you the fact</p> <p>6 that there was a reinsurance program?</p> <p>7 A He hid the dollar amounts.</p> <p>8 Q Well, he didn't hide from you the amount</p> <p>9 that your department was being charged.</p> <p>10 A But that was a false amount. It wasn't</p> <p>11 the correct amount. It wasn't the total amount</p> <p>12 after profit that the dealership was getting.</p> <p>13 Q He did not hide from you the amount your</p> <p>14 department was being charged; true?</p> <p>15 A The amount? Yes, he hid it.</p> <p>16 Q He hid the amount that your department was</p> <p>17 being charged?</p> <p>18 A Oh, I'm sorry, I misunderstood you. I</p> <p>19 knew what the cost was that the department was</p> <p>20 being charged but I don't know what the costs were</p> <p>21 that the dealership was being charged.</p> <p>22 Q And he didn't hide from you the fact that</p> <p>23 there were reinsurance companies; correct?</p> <p>24 A Yeah, there were no details given. All I</p> <p>25 knew was there were monies going somewhere and I</p>



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1 wasn't being paid on it.
 2 Q And you know that in 2003?
 3 MR. LYONS: Objection; asked and
 4 answered. I think this is the fifth time.
 5 Let him answer one more time but I'm not
 6 going to let him answer it again.
 7 Go ahead, you can answer one more
 8 time. I'm getting tired of hearing the
 9 same question six or seven times.
 10 A Again, I don't remember the date. It was
 11 somewhere around 2004. I don't remember the exact
 12 date.
 13 Q So by 2004 you were aware there was a
 14 reinsurance company and you weren't being paid
 15 what you call the total profit on the pool?
 16 MR. LYONS: Objection. I'm not
 17 allowing you to answer at this time.
 18 This is ridiculous, you asked the
 19 same question and gave the same answer.
 20 It's not going to happen again. Take it
 21 to the Judge. That's all the answers
 22 you're going to get on that question.
 23 The court reporter will read it back, you
 24 asked it six times.
 25 MR. ORNSTEIN: If I got the same

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1 answer every time it would be different.
 2 MR. LYONS: You did get the same
 3 answer every time. Go ahead and ask
 4 another question.
 5 BY MR. ORNSTEIN:
 6 Q In Paragraph 50 of your complaint it
 7 states that Defendant's attempts through their
 8 principals, Curtsinger and Caldwell, to coerce the
 9 Plaintiff to commit perjury as a condition to
 10 continued employment and their threats to blame
 11 him for illegal acts committed by others made his
 12 working conditions so difficult that Plaintiff as
 13 a reasonable person felt compelled to resign and
 14 leave Defendant's employ.
 15 Are you aware of that?
 16 A Yes.
 17 Q The testimony that you're speaking about
 18 is what testimony?
 19 A Jeff Sutton and the forgery of his
 20 signature on a contract.
 21 Q So it is the deposition testimony that you
 22 gave in the Sutton case?
 23 A No, it was the second one that I never
 24 did, it was canceled.
 25 Q What was the date of that?

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1 A I don't remember. Last year some time.
 2 Q Tell me about the conversation that you
 3 had last year some time with either Mr. Curtsinger
 4 or Mr. Caldwell about your potential testimony in
 5 Sutton.
 6 A I had the conversation with them several
 7 times. I was told to keep the party line, so to
 8 speak, I'm paraphrasing again, and not blame the
 9 dealership otherwise it would be blamed on me.
 10 And as it turns out, they, to their word, they did
 11 blame it on me.
 12 Q When did that conversation happen?
 13 A Again, it happened several times.
 14 Q When?
 15 A '03, '04, '05. I don't remember specific
 16 dates. The first conversation was when the suit
 17 originally came out and I don't remember what date
 18 that was. I think it was '04, but don't quote me
 19 on that.
 20 Q So you think, if I understand your
 21 testimony, that these conversations would have
 22 happened in '03, '04, '05?
 23 A Again, the first conversation I knew
 24 happened when the lawsuit first came out. What
 25 date that was, I don't recall.

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1 Q Okay. Well, you gave your testimony in
 2 2008. Do you think that conversation happened in
 3 2004?
 4 A Yes.
 5 Q When is the next time the conversation
 6 happened?
 7 A It happened several times over the course
 8 from '04 to '06 -- '07; I'm sorry. I wasn't there
 9 in '08.
 10 Q What conversation did you have in '07 in
 11 this regard?
 12 A The issue came up again when I was
 13 interviewing for the job at Douglas Jeep and Jeff
 14 Sutton's name came up. And I was told that, I was
 15 guaranteed that I would get the job at Douglas
 16 Jeep when the issue of Sutton came up.
 17 Q Did you ever have a conversation about
 18 testifying or testimony in the Sutton case in 2007
 19 while you were an employee of Venice Dodge Nissan?
 20 A While I was an employee?
 21 Q Yes, sir.
 22 A I don't recall.
 23 Q When was the last time you recall having a
 24 conversation about your testimony, whether it
 25 occurred or was to occur, with either



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<p style="text-align: center;">129</p> <p>1 Mr. Curtsinger or Mr. Caldwell while you were an 2 employee of Venice Dodge Nissan? 3 A Probably '06. 4 Q Tell me about that conversation. 5 A Same conversation. 6 Q What conversation exactly? 7 A The conversation was, the gist of the 8 conversation was don't do anything to blame the 9 dealership or anybody in particular and basically 10 just deny everything. 11 Q And who asked you to do that? 12 A Curtsinger and Caldwell. 13 Q Did they say after that that if you do say 14 anything that hurts the dealership that you would 15 be blamed for the acts? 16 A Yes. 17 Q And did that happen in '06? 18 A Did what happen? Did they blame me in 19 '06 or the conversation? 20 Q The conversation. 21 A That conversation happened two or three 22 times. 23 Q Did it happen in 2006? 24 A I believe so. 25 Q Was it at the beginning of 2006 or the end</p>	<p style="text-align: center;">131</p> <p>1 Q When you say that everybody knew, can you 2 give me the name of anybody? 3 A The finance department, sales managers. 4 Q I need names of people so I can go from 5 here and talk to them. 6 A Brad Combs. 7 Q Who else? 8 A Jason Martin, DJ Padilla, sales managers, 9 Marvin White, Jack Prater, they all brought it up. 10 Q They brought it up with you? 11 A Yeah. They would say things like why does 12 Don have such a hard on for you. 13 Q Did you ever answer? 14 A I would say I don't know. 15 Q Paragraph 49 of your complaint states that 16 Defendants yelled at you. 17 Was that Don Caldwell? 18 A Yes. 19 Q It says that Defendants humiliated you. 20 Is that Don Caldwell? 21 A Yes. 22 Q No other Defendants? 23 A No. 24 Q And who threatened you with termination if 25 you did not commit perjury?</p>
<p style="text-align: center;">130</p> <p>1 of 2006? 2 A Um, probably towards the end. I don't 3 remember specifically. 4 Q About how many times do you think the 5 conversation happened? 6 A Two or three times. 7 Q In Paragraph 49 it says that the 8 Defendants berated you. 9 Which Defendants? 10 A Don Caldwell repeatedly for years. 11 Q So Vern Buchanan did not? 12 A No, neither did Shelby. It was all Don 13 Caldwell. 14 Q And in the years of beratement or alleged 15 beratement by Don Caldwell, can you tell me who 16 witnessed that? 17 A Everybody witnessed. It was common 18 knowledge that Don Caldwell -- and, again, this 19 isn't precise -- but had it out for me. They 20 would laugh about it. They didn't understand how 21 I still had a job there because he had such a hard 22 on for me. 23 Q And by hard on you mean what? 24 A Just an attitude towards me in a negative 25 way.</p>	<p style="text-align: center;">132</p> <p>1 A Don Caldwell. 2 Q Was the threat of termination before your 3 2004 testimony or after your 2004 testimony? 4 A Both. 5 Q Did you commit perjury in your 2004 6 deposition? 7 A No. 8 Q Did you get fired? 9 A No, because I didn't commit perjury. I 10 didn't blame it on the dealership. 11 Q If I understand your testimony you were 12 threatened that if you didn't commit perjury in 13 your 2004 deposition you would be terminated? 14 A The point was -- 15 Q I'm asking you -- 16 A I'm answering your question. 17 Q Okay. 18 A The point was that if I blamed -- I was 19 told that if I blamed it on the dealership in any 20 way, that I would suffer the consequences, it 21 would be blamed on me. And I had nothing to do 22 with it. 23 Q Your complaint states that you were told 24 you were to commit perjury or you would be 25 terminated; true?</p>



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1 A I don't know. I don't have it in front of
 2 me. Is that what it says?
 3 Q Yes.
 4 A Okay.
 5 Q And if I understand your testimony you did
 6 not commit perjury in 2004; correct?
 7 A That's correct.
 8 Q And you were not terminated; correct?
 9 A Correct.
 10 Q So Don Caldwell didn't make good on his
 11 perceived promise; true?
 12 A No, that's not true. They wound up
 13 blaming it on me after I left, as I understand it.
 14 I was told they blamed it on me.
 15 Q Who told you that?
 16 A My attorney.
 17 Q What aspect of the Sutton transaction did
 18 they blame on you?
 19 A Forging his signature.
 20 Q Who is it that you believe stated that you
 21 forged a signature with regards to the Sutton
 22 transaction?
 23 A It was either Brad Combs or Don Caldwell,
 24 one or the other. That's what I believe.
 25 Q Have you ever read that testimony?

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1 A Which testimony?
 2 Q Any testimony by either Mr. Combs or
 3 Mr. Caldwell saying that.
 4 A No, I didn't. My answer to that question
 5 was as it pertains to the interview that I had
 6 with Douglas Jee when that came up. I was told
 7 that they heard, they were told that I had forged
 8 a signature. I believe the person that told them
 9 that was either Brad Combs or Don Caldwell.
 10 Q Do you know if that came up or not in the
 11 Sutton litigation itself where somebody blamed you
 12 for forging a signature?
 13 A As I understand it, yes, it did come up by
 14 Shelby Curtisinger.
 15 Q Your complaint states the Defendants'
 16 retaliation constituted a change in the conditions
 17 of employment which resulted in Plaintiff being
 18 constructively discharged.
 19 Are you aware of that testimony?
 20 A That was a culmination of things that
 21 happened over several years where my working
 22 environment became more and more hostile as a
 23 result of your client, Don Caldwell, because I
 24 would complain about the things that went on
 25 there. And the more I complained, the worse he

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1 got.
 2 Q By berating, I really do need to know what
 3 he said to you that constituted that beratement or
 4 humiliation in 2006 and 2007.
 5 A Humiliation had to do with doing it in
 6 public, doing it in the showroom, doing it in the
 7 office, doing it in the middle of meetings, all
 8 with other people around me. That was
 9 humiliating. Berating me is berating me.
 10 Q Berating is a word.
 11 A It has a definition.
 12 Q I need to know what he said to you that
 13 you consider being berated.
 14 A Yelling at me.
 15 Q What did he say when he yelled? Was
 16 there, did he just make a noise or were there
 17 words in the yell?
 18 A There were words.
 19 Q What were the words?
 20 A You did this wrong, you did that wrong,
 21 why is this this way, why is that that way.
 22 Beratement, I mean, I could get you a definition
 23 of beratement if you like one. I think that is
 24 fairly self-explanatory.
 25 Q Actually, I would like to know the

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1 conversations that you had with Mr. Caldwell that
 2 you deem a beratement.
 3 A You want specific conversations?
 4 Q Yes, I do, sir.
 5 A Okay. Yelling at me over things that
 6 happened at the dealership.
 7 Q Okay. Like what?
 8 A Like if a deal didn't get closed by a
 9 finance manager it would be my fault. He would
 10 come to me and want to know why I didn't get
 11 involved in the deal.
 12 Q What was your title at that point?
 13 A What is that.
 14 Q And your title was what, director of
 15 finance?
 16 A Yes. But if I was with another customer
 17 or not even on the lot or not even there, if it
 18 was my day off and a deal didn't get closed I come
 19 in the next day and he wanted to know why the deal
 20 didn't get closed and it would be my fault.
 21 That's a good example.
 22 Q What is another example?
 23 A Treating customers, if a finance manager
 24 didn't close a deal and he felt that the finance
 25 manager didn't treat the customer correctly in a



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1 manner that would close the deal, that would be my
2 fault. Because I didn't train the finance manager
3 on how to close a deal when the deal might not
4 have been closable in the first place, like a box
5 close, for example.

6 Q Okay, two good examples. What else?

7 A I don't know, there were so many of them.

8 I can't recall any one specific. Um, mostly it
9 had to do with him yelling at me for things I had
10 absolutely no control over. I remember one time
11 there was a customer that made a, filed a
12 complaint with the DMV about a title and that
13 turned out to be my fault somehow. He tried to
14 blame it on me. And I was yelled at upstairs in
15 the office in front of all the office girls.

16 There is another example.

17 Q What other examples?

18 A Um, Brad Combs came in late all the time.
19 That was my fault, according to Don.

20 Q Was that when you were the finance
21 director?

22 A Yes, but I told Brad repeatedly in front
23 of Don that he needed to come in on time. I had
24 done my responsibility as far as getting Brad to
25 work on time. If he continued to come into work

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1 not on time, I told Don we either need to fire him
2 or write him up. His response was just control
3 him and get him to do his job. And the way it
4 came across was in a berating tone, a
5 condescending tone. There is another example.

6 Q Okay. Three concrete examples. What
7 else?

8 A I think that's four.

9 Q Or four. What else?

10 A Again, just yelling at me for things I
11 have no control over.

12 Q Can you think of any other examples than
13 the four that you gave me?

14 A Again, it happened so many times, but the
15 gist of it was blaming me for things that I had no
16 control over, things that salesmen did. If they
17 didn't fill out a credit application properly, it
18 was my fault. And I never seen the deal, it was
19 done by another finance manager. Not setting up
20 things off-site sales fast enough. If the
21 computer broke down, that was my fault because I
22 couldn't fix them. And this all happened more and
23 more progressively as I complained, more
24 progressively.

25 Q Complain about what?

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1 A What was going on at the dealership,
2 things like power booking and doctoring invoices
3 and Jason Martin, his nephew.

4 MR. ORNSTEIN: Doug, I'm going to
5 take a one minute break just to ask Bill
6 something. You don't have to get off the
7 phone.

8 MR. LYONS: All right.
9 [Brief recess was taken.]

10 BY MR. ORNSTEIN:

11 Q The four examples that you gave me for
12 2006, is that a pretty good flavor of the
13 beratement?

14 A Yes. Those weren't specifically examples
15 for '06, those were examples over the four years.

16 Q So that's a pretty good example of the
17 beratement over the years, then?

18 A Yes. He would also berate me for
19 complaining about the things that went on. In
20 other words, if I brought something to his
21 attention his entire attitude would be
22 condescending and berating.

23 Q Brought what to his attention?

24 A Illegal things that went on there. Like
25 Jason Martin leasing a used vehicle and telling

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1 the bank it was new.

2 Q When was that?

3 A That was '05 or '06. I brought that to
4 Don's attention and got nothing but attitude and
5 brain damage.

6 Q Earlier your testimony was that was 2005.
7 Is that --

8 A I don't remember the specific year.

9 Q And you don't recall any other instances
10 other than what you told us this morning with
11 regard to the forged invoices, power booking, or
12 Scott Martin making pay stubs?

13 A What do you mean? I don't understand your
14 question.

15 Q Well, you told me about the instances this
16 morning. You don't recall any others; do you?

17 A Are those not bad enough?

18 MR. ORNSTEIN: Can you ask him the
19 question again.

20 [Record read as requested.]

21 A Lying to customers.

22 BY MR. ORNSTEIN:

23 Q Who lied to customers?

24 A Salesmen, sales managers, telling
25 customers their payments were going to be one



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<p style="text-align: center;">141</p> <p>1 thing when they knew they wouldn't be, just to put 2 them in the box. 3 Q Did that happen with customers that you 4 dealt with? 5 A Yes. 6 Q Did you ever sell the customers vehicles? 7 A Probably, I don't remember any 8 specifically. If it was 20 or \$30,000, yes, I 9 could probably get them to get to raise the 10 payments by 20 or \$30 by selling them a warranty 11 or selling them some product. 12 Q And would you make money when you did 13 that? 14 A Yes. 15 Q Did the customers leave happy? 16 A I don't think that's at point. 17 Q Did they leave happy? 18 A The point is they were lied to. Whether 19 they left happy or not, I don't know. 20 Q Did they get a product for the payment? 21 A Did they get a product for the payment? 22 Q Sure. You said -- 23 A A car, you mean? 24 Q Well, you said you would sell them a 25 warranty or something, or a service contract, I</p>	<p style="text-align: center;">143</p> <p>1 produced. It's a general sales manager 2 meeting September 26, 2006. But I don't 3 actually do the production so I would 4 rather not say, but I believe it was. 5 BY MR. ORNSTEIN: 6 Q And I ask if your signature appears on 7 that document? And I do want you to read it. 8 A Yes, my signature is on there. 9 Q Do you recall getting that document? 10 A Specifically, no, I don't. 11 Q Do you ever recall getting such a 12 document, if not this one specifically? 13 A What document? 14 Q The one in your hand. 15 A Do I remember getting this specifically? 16 I said no. 17 Q Do you remember getting a document of that 18 type, if not that document specifically? 19 A Maybe, probably. 20 Q Do you ever recall attending a meeting 21 where the lines set forth in the document in your 22 hand -- 23 MR. LYONS: I'm going to ask the 24 court reporter to take a minute and fax it 25 to me. I don't recall what you're talking</p>
<p style="text-align: center;">142</p> <p>1 guess is more correct, to get to that payment; 2 correct? 3 A Yes. 4 Q And would they, in fact, get a service 5 contract? 6 A Yes. 7 Q Is a service contract a good product? 8 A Yes. But, again, the point goes back to 9 originally being lied to in the first place. 10 Whether they left happy or not is irrelevant. If 11 a customer is lied to and misled and dealt with in 12 an unethical manner, whether they're happy or not 13 doesn't matter. 14 MR. ORNSTEIN: Could you mark that as 15 Exhibit 2. 16 [The September 25, 2006, General 17 Sales Manager Meeting was hereby marked 18 as Defendant's Exhibit 2 for 19 identification, as of this date.] 20 BY MR. ORNSTEIN: 21 Q Let me show you what has been marked as 22 Exhibit 2. 23 MR. LYONS: Can I ask what Exhibit 2 24 is and have you produced it previously? 25 MR. ORNSTEIN: I think it was</p>	<p style="text-align: center;">144</p> <p>1 about. I would like to see it. If the 2 witness is going to be testifying about 3 the document, I would like to see it. 4 Can you please fax that document to 5 me. Let me get you the fax number. 6 I had this discussion with Andy 7 before, it really would be helpful if the 8 documents -- I would appreciate it very 9 much -- whenever I take a deposition I 10 always Bates stamp documents, send a copy 11 to you and send a copy to the court 12 reporter so both the court reporter and 13 you have a copy of all the documents that 14 I'm going to be using during the course 15 of the deposition. 16 Since I'm attending these by phone 17 and since you know I'm attending them by 18 phone, it would expedite things and just 19 common courtesy to let me have the 20 documents that you're going to be using 21 so that I'll have them in hand and can 22 follow along rather than having to 23 interrupt the deposition and have you 24 send me the documents. I would 25 appreciate that if you extend me the same</p>



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<p style="text-align: center;">145</p> <p>1 courtesy I extend you.</p> <p>2 MR. ORNSTEIN: First of all, Doug,</p> <p>3 you never sent us documents before a</p> <p>4 deposition.</p> <p>5 MR. LYONS: I always have. If I'm</p> <p>6 there in person I bring them with me.</p> <p>7 MR. ORNSTEIN: Second of all, you</p> <p>8 know what, I don't know what documents I'm</p> <p>9 going to use.</p> <p>10 MR. LYONS: You know what you're</p> <p>11 going to bring with you, you bring</p> <p>12 documents with you. You know you're going</p> <p>13 to bring the documents with you. You may</p> <p>14 not use all of them. Either reference</p> <p>15 them by Bates stamp for the production</p> <p>16 that has been made. I mean, Barbara Stern</p> <p>17 does that in the Secoy (phonetic) case,</p> <p>18 she always lets me know what she's going</p> <p>19 to use before the deposition. Anyway, my</p> <p>20 fax number is (850)222-5983.</p> <p>21 MR. ORNSTEIN: For the record, these</p> <p>22 were provided to you. We just looked at</p> <p>23 the request for production.</p> <p>24 MR. LYONS: If the production was</p> <p>25 Bates stamp numbered. Do you know which</p>	<p style="text-align: center;">147</p> <p>1 him that wrote that.</p> <p>2 Q And on the third page, the last page, is</p> <p>3 that your signature?</p> <p>4 A Yes.</p> <p>5 Q And the date when you signed it?</p> <p>6 A Yes.</p> <p>7 Q Which is?</p> <p>8 A August 25th.</p> <p>9 Q 2008?</p> <p>10 A Uh-huh. Although this is dated</p> <p>11 September 25th, so I don't know if I put at wrong</p> <p>12 date or the wrong date is on the top of this, one</p> <p>13 or the other. The dates aren't the same, they're</p> <p>14 one month apart.</p> <p>15 Q Do you ever recall having general sales</p> <p>16 manager meetings?</p> <p>17 A Yes.</p> <p>18 Q And would you participate in some of those</p> <p>19 meetings?</p> <p>20 A It was required, yes. I didn't have any</p> <p>21 other choice.</p> <p>22 Q Would you have signed a document setting</p> <p>23 forth issues that had been discussed that hadn't</p> <p>24 been discussed?</p> <p>25 A Probably not.</p>
<p style="text-align: center;">146</p> <p>1 response to which request for production</p> <p>2 it is? Anyway, let me go to the machine.</p> <p>3 I think at this point it would be quicker</p> <p>4 to get it from the machine.</p> <p>5 [Brief recess was taken.]</p> <p>6 MR. LYONS: Apparently the fax</p> <p>7 machine went out when we had a power</p> <p>8 outage. I have the file here.</p> <p>9 Specifically what request for production?</p> <p>10 MR. ORNSTEIN: Four.</p> <p>11 MR. LYONS: Let me go pull it.</p> <p>12 I now have it in front of me. I</p> <p>13 have the response to the fourth request</p> <p>14 in front of me. Which document are we</p> <p>15 looking at?</p> <p>16 MR. ORNSTEIN: The sales manager</p> <p>17 meeting hyphen September 25, 2008.</p> <p>18 MR. LYONS: I have that. Thank you.</p> <p>19 BY MR. ORNSTEIN:</p> <p>20 Q Mr. Bell, do you have it in front of you?</p> <p>21 A Yes.</p> <p>22 Q Do your initials appear at the top?</p> <p>23 A Yes. I think that's -- it's definitely</p> <p>24 not my handwriting. It's probably Don Caldwell.</p> <p>25 Since it was a GSM meeting I would assume that was</p>	<p style="text-align: center;">148</p> <p>1 Q And isn't it a fact?</p> <p>2 A I don't know, I mean, I don't know the</p> <p>3 answer to that question. There is no guarantee,</p> <p>4 there are 21 things on here, that they discussed</p> <p>5 every one of them or that we didn't discuss more</p> <p>6 than 21.</p> <p>7 Q Do you recall whether or not you discussed</p> <p>8 that there is never to be any falsifying or</p> <p>9 dummyming up of invoices, pay stubs, or legal</p> <p>10 documents for any reason?</p> <p>11 A Oh, I see that written on here.</p> <p>12 Q Did you discuss that?</p> <p>13 A I don't know, I don't remember. It's</p> <p>14 really irrelevant because it went on continuously.</p> <p>15 So what this says and what was reality is two</p> <p>16 different things.</p> <p>17 Q Do you know if you discussed the fact that</p> <p>18 any manager that sees any situation that is</p> <p>19 illegal or bad for business for any reason is to</p> <p>20 bring it to Don's attention?</p> <p>21 A Yes, I did do that.</p> <p>22 Q Was that discussed --</p> <p>23 A Continuously.</p> <p>24 Q Was that discussed at the meeting?</p> <p>25 A Oh, I couldn't tell you. I don't</p>



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<p style="text-align: center;">149</p> <p>1 remember.</p> <p>2 Q Do you see where it says that all managers</p> <p>3 are to work together and not to be condescending</p> <p>4 to one another?</p> <p>5 A What number is that?</p> <p>6 Q Fourteen.</p> <p>7 A Yes.</p> <p>8 Q So you will admit to me or you will admit,</p> <p>9 will you not, that Exhibit 2 deals with the issues</p> <p>10 that you brought up this morning that you brought</p> <p>11 up in your deposition; correct?</p> <p>12 A Again, what is written on here and what</p> <p>13 went on in actuality is two totally different</p> <p>14 things, so I will not admit to that. That is the</p> <p>15 answer to your question, no, I will not.</p> <p>16 Q You will not admit that the issues that,</p> <p>17 some of the issues that you brought up this</p> <p>18 morning are covered in Exhibit 2?</p> <p>19 MR. LYONS: The document speaks for</p> <p>20 itself. The witness answered the</p> <p>21 question. You can answer it again.</p> <p>22 A Again, I see they're written on there.</p> <p>23 But what is written on here and what went on in</p> <p>24 actuality are two different things.</p> <p>25 BY MR. ORNSTEIN:</p>	<p style="text-align: center;">151</p> <p>1 Doug. I don't know. I believe so, yes.</p> <p>2 MR. LYONS: Was it in the fourth</p> <p>3 request for production?</p> <p>4 MR. ORNSTEIN: Brother, I don't</p> <p>5 remember. I don't know. Do you want me</p> <p>6 to fax it to you -- oh, we can't do that.</p> <p>7 MR. LYONS: You can't fax it to me.</p> <p>8 But I'm familiar with employee reprimand.</p> <p>9 That's probably his personnel file.</p> <p>10 MR. ORNSTEIN: That would be true.</p> <p>11 MR. LYONS: So I'm familiar with it.</p> <p>12 So go ahead.</p> <p>13 BY MR. ORNSTEIN:</p> <p>14 Q Let me ask you if your signature appears</p> <p>15 anywhere on Exhibit 3?</p> <p>16 A Yes.</p> <p>17 Q Do you see where it says "Any further acts</p> <p>18 regarding insubordination, violation of company</p> <p>19 policies, or customer complaints regarding the way</p> <p>20 Carlo talks to them or treating them will result</p> <p>21 in immediate termination"?</p> <p>22 A Yes.</p> <p>23 Q And you signed under that?</p> <p>24 A Yes.</p> <p>25 Q Now, that was not from 2007; correct?</p>
<p style="text-align: center;">150</p> <p>1 Q And you signed this document?</p> <p>2 A Yes, it's signed.</p> <p>3 Q Did you ever get reprimanded by Don</p> <p>4 Caldwell for the way you would speak to customers?</p> <p>5 A The last reprimand I believe said</p> <p>6 something to the effect that I was rude or I was</p> <p>7 hard on a customer, or hard on customers. I don't</p> <p>8 remember exactly how it was written.</p> <p>9 Q Do you remember the name of the customer?</p> <p>10 A No.</p> <p>11 MR. ORNSTEIN: Go ahead and mark this</p> <p>12 as Exhibit 3.</p> <p>13 MR. LYONS: What is Exhibit 3,</p> <p>14 please?</p> <p>15 MR. ORNSTEIN: Let me get it marked</p> <p>16 and I'll read it to you in detail.</p> <p>17 [The Notice of Employee Reprimand</p> <p>18 03/21/07 was hereby marked as Defendant's</p> <p>19 Exhibit 3 for identification, as of this</p> <p>20 date.]</p> <p>21 MR. ORNSTEIN: Exhibit 3 is a notice</p> <p>22 of employee reprimand.</p> <p>23 MR. LYONS: Has that been produced</p> <p>24 previously?</p> <p>25 MR. ORNSTEIN: As far as I know,</p>	<p style="text-align: center;">152</p> <p>1 A It's dated 2007, March 21st.</p> <p>2 Q Is not the date for the previous --</p> <p>3 A Is the previous reprimand.</p> <p>4 Q Well, let me ask you, that form, which</p> <p>5 reprimand is that for? Is that for the 3/21/07 or</p> <p>6 for the 6/19/06?</p> <p>7 A 3/21/07.</p> <p>8 Q I'm sorry; 10/18/06, insubordination of an</p> <p>9 employee --</p> <p>10 A This is 3/21/07 is the date on this. This</p> <p>11 is the date that I left. I think, actually,</p> <p>12 didn't we determine it was the 24th, the date that</p> <p>13 I left?</p> <p>14 Q We knew your complaint says at 24th, yes.</p> <p>15 A This is the last conversation I had with</p> <p>16 Don Caldwell and this is when I quit. This was</p> <p>17 the last straw. They tried to box close a</p> <p>18 customer and I couldn't close him. This is a</p> <p>19 perfect example of berating me for something I had</p> <p>20 no control over.</p> <p>21 This customer was a box close. They were</p> <p>22 quoted a payment and I tried to raise them to a</p> <p>23 payment they would agree to, a realistic payment</p> <p>24 that they qualified for; and they left. And then</p> <p>25 I was blamed for it.</p>



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<p style="text-align: center;">153</p> <p>1 Q Are you aware that they bought a car the 2 next day? 3 A No, I'm not. 4 Q Are you aware that they are still service 5 customers of the dealership? 6 A No, I'm not. Maybe they lowered the price 7 of the car, who knows. 8 [The Notice of Employee Reprimand 9 6/19/06 was hereby marked as Defendant's 10 Exhibit 4 for identification, as of this 11 date.] 12 MR. ORNSTEIN: Another notice of 13 employee reprimand, Doug, being marked. 14 MR. LYONS: These are in the 15 personnel file. I'm familiar with them. 16 BY MR. ORNSTEIN: 17 Q Let me show you what has been marked as 18 Exhibit 4 and ask you if you recognize that. 19 A I believe this was after -- 20 Q Do you recognize it? 21 A I see it has my signature on it. 22 Q Now, if you would tell us what it's about. 23 A This was, if I'm not mistaken, a 24 conversation I had with DJ Padilla. It was -- it 25 doesn't say what day of the week it was. I</p>	<p style="text-align: center;">155</p> <p>1 BY MR. ORNSTEIN: 2 Q And ask if your signature appears on it? 3 A Yes, it does. 4 Q What is that document? 5 A It's a reprimand form. 6 Q And what is it a reprimand for? 7 A Not billing out other finance manager's- 8 deals. 9 Q And what else? 10 A Surfing unapproved internet sites, surfing 11 porn sites. And five discrepancies on JM&A 12 products for September. 13 Q What is your date of birth? 14 A May 23rd, 1962. 15 Q Did you graduate high school? 16 A Yes. 17 Q Did you graduate college? 18 A No. 19 Q Did you go to Florida State? 20 A No. 21 Q No? 22 A No. 23 Q Did you go to college? 24 A Yes. 25 Q Where did you go to college?</p>
<p style="text-align: center;">154</p> <p>1 believe it was a Monday. And I asked DJ Padilla 2 to bill out his deals, and he didn't. We had an 3 argument about it. 4 He went to Don. And in the course of the 5 conversation with Don, I got into an argument with 6 Don and he wrote me up. 7 Q Okay. 8 A For being too hard -- I'm sorry, for being 9 insubordinate with him. 10 Q And being too hard on him; correct? 11 A No, being too hard on DJ. 12 Q Did you yell at DJ? 13 A We were both yelling at each other. 14 [The Notice of Employee Reprimand 15 8/18/06 was hereby marked as Defendant's 16 Exhibit 5 for identification, as of this 17 date.] 18 BY MR. ORNSTEIN: 19 Q Let me show you what has been marked as 20 Exhibit 5 and ask you if your signature appears on 21 it. 22 MR. LYONS: What is Exhibit 5? 23 MR. ORNSTEIN: Another -- 24 THE WITNESS: Notice of reprimand. 25 MR. ORNSTEIN: Notice of reprimand.</p>	<p style="text-align: center;">156</p> <p>1 A MCC. 2 Q What is MCC? 3 A Manatee Community College. 4 Q Were you ever in the army? 5 A Yes. 6 [The Application for Employment was 7 hereby marked as Defendant's Exhibit 6 8 for identification, as of this date.] 9 [The Carlo Bell's resume was hereby 10 marked as Defendant's Exhibit 7 for 11 identification, as of this date.] 12 MR. ORNSTEIN: I'm starting with 7 13 instead of 6, Doug, and it is your 14 client's resume, Gettel 14. 15 MR. LYONS: Yes, I have got it. I 16 have seen it. I don't have it in front of 17 me but I'm familiar with it. Go ahead. 18 BY MR. ORNSTEIN: 19 Q Let me show you what has been marked as 20 Exhibit 7 and ask you if you recognize that 21 document? 22 A Yes. 23 Q Did you prepare that document? 24 A Yes. 25 Q Does that document say that you went to</p>



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<p>1 Florida State University?</p> <p>2 A Yes.</p> <p>3 Q Is that a lie?</p> <p>4 A Yes.</p> <p>5 Q Let me show you what has been marked as</p> <p>6 Exhibit 6, which I will tell you is your</p> <p>7 application for the Hendricks Group.</p> <p>8 Does that application say that you got a</p> <p>9 four-year degree --</p> <p>10 A Yes.</p> <p>11 Q -- from Florida State University?</p> <p>12 A Yes.</p> <p>13 Q Is that a lie?</p> <p>14 A Yes.</p> <p>15 Q Your Sutton testimony says that you quit</p> <p>16 your employment at Gettel.</p> <p>17 Did you quit or did you get fired?</p> <p>18 A Both. It was mutual. I was looking for a</p> <p>19 job two months before I left.</p> <p>20 Q Do the employment records at Gettel show</p> <p>21 that you got terminated?</p> <p>22 A I don't know. Yes, I think they do.</p> <p>23 Q And what do they think you got terminated</p> <p>24 for?</p> <p>25 A I think it just says poor performance.</p>	<p>1 Q And after Sarasota High what did you do?</p> <p>2 A Went into the army.</p> <p>3 Q How long did you spend in the army?</p> <p>4 A Two years.</p> <p>5 Q Honorable or dishonorable discharge?</p> <p>6 A Honorable.</p> <p>7 Q After you got out of the army what did you</p> <p>8 do?</p> <p>9 A Worked in restaurants for a couple of</p> <p>10 years.</p> <p>11 Q How old were you?</p> <p>12 A That would have been '83, so 21, 22.</p> <p>13 Q After working in restaurants for a while</p> <p>14 what did you do?</p> <p>15 A Got into the car business.</p> <p>16 Q And who did you go to work for in the car</p> <p>17 business first?</p> <p>18 A I went to go to work for a guy by the name</p> <p>19 of Jerry Williams, he's a Subaru dealer.</p> <p>20 Q Where was he a Subaru dealer?</p> <p>21 A Bradenton and Sarasota. He wasn't</p> <p>22 actually the dealer, he was a sales manager.</p> <p>23 That's who I worked for for three or four years.</p> <p>24 Q What was the name of the store?</p> <p>25 A Um, Suncoast Subaru. And then RJ Waters</p>
158	160
<p>1 Q So you were terminated; correct?</p> <p>2 A Yes. But your clients knew that when they</p> <p>3 hired me. We talked about it. They knew that I</p> <p>4 had been terminated.</p> <p>5 Q Did you know you had been terminated when</p> <p>6 you said in the Sutton deposition that you had not</p> <p>7 been terminated?</p> <p>8 A I didn't say I had been terminated, I said</p> <p>9 I left, it was mutual.</p> <p>10 Q You were asked why did you leave. Your</p> <p>11 testimony was, your answer was, "I left for</p> <p>12 opportunity".</p> <p>13 A That's why I left.</p> <p>14 Q It wasn't because you were terminated?</p> <p>15 A It was mutual. I had been looking for a</p> <p>16 job for two months before that and they knew that.</p> <p>17 Q When you got terminated did you have the</p> <p>18 ability to say, gee, gentlemen, I don't wish to be</p> <p>19 terminated --</p> <p>20 A No, because they knew I was looking --</p> <p>21 Q -- I want to stay?</p> <p>22 A I was looking for another job. I didn't</p> <p>23 want to stay. So I didn't ask them if I can stay.</p> <p>24 Q Where did you graduate high school?</p> <p>25 A Sarasota High.</p>	<p>1 Subaru, but I worked for the same guy at both</p> <p>2 places.</p> <p>3 Q How long were you there?</p> <p>4 A I worked for Jerry Williams for three or</p> <p>5 four years.</p> <p>6 Q In the same store?</p> <p>7 A Two different stores.</p> <p>8 Q Two different Subaru stores?</p> <p>9 A Yes.</p> <p>10 Q I understood one was in Bradenton. Where</p> <p>11 was the other one?</p> <p>12 A Sarasota.</p> <p>13 Q Do you know where Mr. Williams is now?</p> <p>14 A No, I have no idea.</p> <p>15 Q Do you know approximately what dates this</p> <p>16 was?</p> <p>17 A It was '85 to '88 or '89. It's on the</p> <p>18 resume.</p> <p>19 Q Then is your next place of employment</p> <p>20 Temple -- let me ask you this. What did you do at</p> <p>21 Subaru, RJ Waters Subaru?</p> <p>22 A Salesman and finance manager.</p> <p>23 Q Was that your first job as a finance</p> <p>24 manager?</p> <p>25 A Yes.</p>



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161	163
<p>1 Q Did they sell JM&A products?</p> <p>2 A No.</p> <p>3 Q And your next job was where?</p> <p>4 A Templeton Toyota.</p> <p>5 Q Where is Templeton Toyota?</p> <p>6 A In Sarasota.</p> <p>7 Q Is it still Templeton Toyota?</p> <p>8 A No.</p> <p>9 Q What is it now, if you know?</p> <p>10 A I think it's Germain.</p> <p>11 Q I'm sorry; why did you leave RJ Waters Subaru?</p> <p>12 A Just to make more money. I wasn't making any money there.</p> <p>13 Q And why did you leave the Subaru store in Bradenton?</p> <p>14 A To follow Jerry Williams, to go work for him at RJ Waters.</p> <p>15 Q At Templeton did you sell JM&A products?</p> <p>16 A Yes.</p> <p>17 Q And at that point were they using a JM&A menu?</p> <p>18 A No.</p> <p>19 Q Did you receive training from JM&A?</p> <p>20 A While I was at Templeton?</p>	<p>1 Q Then where did you go?</p> <p>2 A I went to Honda in Bradenton.</p> <p>3 Q Why did you leave St. Augustine Toyota?</p> <p>4 A Mostly Bill, just not getting along with him.</p> <p>5 Q Why didn't you get along with him?</p> <p>6 A Billy and I are cousins, we're related.</p> <p>7 Q Did you get fired?</p> <p>8 A No. I have known Billy all my life, we're cousins.</p> <p>9 Q Then you went to Honda Cars after Bradenton?</p> <p>10 A Yes.</p> <p>11 Q How long did you work at Honda Cars after Bradenton?</p> <p>12 A Just over three years, three-and-a-half years.</p> <p>13 Q And who did you report to there?</p> <p>14 A George Hearst (phonetic).</p> <p>15 Q How long were you at Honda Cars after Bradenton?</p> <p>16 A About three-and-a-half years.</p> <p>17 Q And you were the finance director there?</p> <p>18 A I started out as a finance closer and then became the director.</p>
162	164
<p>1 Q Yes, sir.</p> <p>2 A No, I don't think so.</p> <p>3 Q And how long were you at Templeton?</p> <p>4 A A couple of years.</p> <p>5 Q And why did you leave Templeton?</p> <p>6 A To move to New York.</p> <p>7 Q And what was your next job?</p> <p>8 A Liscardi, Chrysler Liscardi.</p> <p>9 Q That was a Chrysler-Plymouth store?</p> <p>10 A Yes.</p> <p>11 Q They actually had Plymouth?</p> <p>12 A Back then they did.</p> <p>13 Q What did you do there?</p> <p>14 A Finance manager, finance closer.</p> <p>15 Q How long were you there?</p> <p>16 A About three years.</p> <p>17 Q And why did you leave there?</p> <p>18 A To move back to Florida.</p> <p>19 Q And where did you go from there?</p> <p>20 A St. Augustine.</p> <p>21 Q Who was the owner at St. Augustine Toyota?</p> <p>22 A Bill Brooks.</p> <p>23 Q That's right.</p> <p>24 How long were you there?</p> <p>25 A A couple of years.</p>	<p>1 Q Was that your first job as finance director?</p> <p>2 A Well, RJ Waters I was by myself.</p> <p>3 Q So you directed you?</p> <p>4 A Yeah, I guess.</p> <p>5 Q When you were at Honda Cars of Bradenton, how many people were in the F&I department?</p> <p>6 A Two, and then they added a third.</p> <p>7 Q And why did you leave Honda Cars of Bradenton?</p> <p>8 A George Waters left and the whole atmosphere changed after he left.</p> <p>9 Q How did it change?</p> <p>10 A They hired another guy and it changed.</p> <p>11 Q Were you fired or did you quit?</p> <p>12 A No, I quit.</p> <p>13 Q After Honda Cars of Bradenton, where did you go?</p> <p>14 A Gettel.</p> <p>15 Q And what did you do at Gettel?</p> <p>16 A Finance closer.</p> <p>17 Q And how long were you at Gettel?</p> <p>18 A Not long. Probably eight or nine months.</p> <p>19 Q And who terminated you there?</p> <p>20 A I think his name was Gary. I don't</p>



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<p style="text-align: center;">165</p> <p>1 remember his last name.</p> <p>2 Q Did Joe Keiser work at Gettel?</p> <p>3 A Yes.</p> <p>4 Q Were you there when Joe Keiser was there?</p> <p>5 A Yes.</p> <p>6 Q Did he get terminated as well?</p> <p>7 A Yes.</p> <p>8 Q What did he get terminated for?</p> <p>9 A I don't know exactly. I think it had</p> <p>10 something to do with some sort of relationship he</p> <p>11 had with -- I don't really know the details. It</p> <p>12 had something to do with his relationship with the</p> <p>13 bank. I don't know why.</p> <p>14 Q Was he getting loans from the bank for</p> <p>15 sending them deals?</p> <p>16 A I don't know.</p> <p>17 Q Let me ask you this, do you have an</p> <p>18 arbitration agreement with Venice Dodge Nissan?</p> <p>19 A No.</p> <p>20 Q Did you have an arbitration agreement with</p> <p>21 Gettel?</p> <p>22 A I don't know.</p> <p>23 Q Did you have an arbitration agreement with</p> <p>24 Honda Cars of Bradenton?</p> <p>25 A I don't know.</p>	<p style="text-align: center;">167</p> <p>1 or three weeks.</p> <p>2 Q Did you get fired or did you leave?</p> <p>3 A No, I quit. I left voluntarily.</p> <p>4 Q Why did you quit?</p> <p>5 A To go to work at Douglas Jeep.</p> <p>6 Q Did you work anywhere between Venice Dodge</p> <p>7 and what is the name of the Honda store?</p> <p>8 A Honda Cars of Bradenton.</p> <p>9 Q Did you go anywhere between Venice and</p> <p>10 Honda cars of Bradenton?</p> <p>11 A No.</p> <p>12 Q Did you work anywhere between Honda Cars</p> <p>13 of Bradenton and Douglas Jeep?</p> <p>14 A No.</p> <p>15 Q Did you go to work for a used car store in</p> <p>16 between that?</p> <p>17 A No.</p> <p>18 Q And so you never worked for a straight-up</p> <p>19 used car store before you went to work for Douglas</p> <p>20 Jeep?</p> <p>21 A I worked for a used car store but I'm</p> <p>22 trying to remember if it was before or after. It</p> <p>23 had to have been after. I was only there two or</p> <p>24 three days.</p> <p>25 Q What was the name of the used car store?</p>
<p style="text-align: center;">166</p> <p>1 Q Did you have an arbitration agreement with</p> <p>2 St. Augustine Toyota?</p> <p>3 A Probably not.</p> <p>4 Q Did you have an arbitration agreement with</p> <p>5 Templeton Toyota?</p> <p>6 A I don't know.</p> <p>7 Q Were you ever asked to sign an arbitration</p> <p>8 agreement at Venice Dodge Nissan?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Did you ever discuss with Joe Keiser his</p> <p>11 arbitration agreement?</p> <p>12 A Maybe.</p> <p>13 Q What did you discuss with him about that?</p> <p>14 A I don't think he was sure whether he</p> <p>15 signed one or not.</p> <p>16 Q What other conversations did you have with</p> <p>17 him in that regards?</p> <p>18 A In regards to an arbitration agreement?</p> <p>19 Q Yes, sir.</p> <p>20 A Just that, that he wasn't sure whether he</p> <p>21 signed one or not.</p> <p>22 Q Where did you go after Gettel?</p> <p>23 A Venice Nissan Dodge.</p> <p>24 Q Where did you go after that?</p> <p>25 A I went to Honda Cars of Bradenton for two</p>	<p style="text-align: center;">168</p> <p>1 A Southern Trust. Yeah, it was after.</p> <p>2 Q Did you get fired or did you quit Douglas</p> <p>3 Jeep?</p> <p>4 A I was laid off. Their business went from</p> <p>5 70 or 80 cars a month down to 30. And the sales</p> <p>6 manager wound up doing his job as well as F&I.</p> <p>7 They downsized, in other words.</p> <p>8 MR. ORNSTEIN: Let's take about a</p> <p>9 five-minute break so I can go back through</p> <p>10 my notes real quick.</p> <p>11 [Brief recess was taken.]</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">*****</p> <p style="text-align: center;">END OF VOLUME I OF II</p>



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IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CASE NO. 2008-CA-012207-NC

CARLO BELL, Individually,
Plaintiff,

-vs-

VERN BUCHANAN, SHELBY CURTSINGER,
DON CALDWELL, 1099 LC d/b/a VENICE
DODGE NISSAN, BUCHANAN AUTOMOTIVE
HOLDINGS, INC.,

Defendants.

-----/

DEPOSITION OF CARLO BELL

VOLUME II OF II
(Pages 168 through 213)

Saturday, August 15, 2009
10:08 a.m. - 4:22 p.m.

Esquire Deposition Solutions
1819 Main Street
Suite 250
Sarasota, Florida

Reported by:

GERRILYNN MEHL, RPR
Notary Public, State of Florida
Esquire Deposition Services - Tampa, Florida
813-221-2535 (800-838-2814)
Job No. 116559Bell.Carlo081509

12044311039

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 14 DONALD CALDWELL
 JOHN TOSCH

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25

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EXHIBITS

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2	142	September 25, 2006, General Sales Manager Meeting
3	150	Notice of Employee Reprimand 03/21/07
4	153	Notice of Employee Reprimand 6/19/06
5	154	Notice of Employee Reprimand 8/18/06
6	156	Application for Employment
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VOLUME II:		
8	172	Resume
9	173	Carlo Bell's resume
10	174	Warning Notice 8/18/08

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VOLUME II OF II

[The Resume was hereby marked as Defendant's Exhibit 8 for identification, as of this date.]

MR. ORNSTEIN: Douglas G000015 is now marked as Exhibit 8.

MR. LYONS: That's Douglas. Okay.

I'm familiar with Douglas. Go ahead.

BY MR. ORNSTEIN (Continued):

Q Let me show you what has been marked as Exhibit 8 and ask you if you recognize that document?

A Yes.

Q What is that document?

A Resume.

Q And is that your resume?

A Yes.

Q And is that the resume that you presented to Douglas Jeep?

A I don't know.

Q Well, let me represent to you that it came out of their employment files.

Do you recognize that document?

A I recognize it as my resume.

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1 Q Does it also state that you went to
2 Florida State University?

3 A Yes.

4 Q And, of course, you did not go to Florida
5 State University?

6 A That's correct.

7 Q Why did you put on there that you went to
8 Florida State University, if you had not?

9 A Just, to be honest with you, because I
10 thought it looked good.

11 Q So did you ever have a concentration in
12 finance and business management from 1981 until
13 1984?

14 A No.

15 Q Did you get an honorable discharge from
16 the United States Army?

17 A Yes.

18 Q Did you go to noncommissioned officer
19 school in Frankfurt?

20 A Yes.

21 Q Is there anything else on Exhibit 8 of
22 your resume that is incorrect?

23 A I don't think so, no.

24 [The Carlo Bell's resume was hereby
25 marked as Defendant's Exhibit 9 for

12044311043

1 identification, as of this date.]

2 MR. ORNSTEIN: Doug, Exhibit 9 is
3 just another version of the resume.

4 MR. LYONS: Okay.

5 BY MR. ORNSTEIN:

6 Q Let me show what you has been marked as
7 Exhibit 9. It came out of another employee file
8 for a place where you worked.

9 Do you recognize that as another version
10 of your resume?

11 A Yes.

12 Q And does it also say you went to FSU?

13 A Yes.

14 Q Has, fundamentally, every job that you
15 applied for in the last 10 years, did you
16 represent that you had a college education?

17 A Yes.

18 MR. ORNSTEIN: I'm going to go
19 through some housekeeping stuff real
20 quickly, Doug, to give myself a rest. And
21 the first one is Douglas Jeep 5.

22 [The Warning Notice 8/18/08 was
23 hereby marked as Defendant's Exhibit 10
24 for identification, as of this date.]

25 BY MR. ORNSTEIN:

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1 Q Let me show you what has been marked as
2 Exhibit 10, which is a Bates number of Douglas
3 Jeep 5, and ask you if you recognize that
4 document?

5 A Yes.

6 Q What is that document?

7 A It is a write-up on a deal where a
8 customer left and I was not able to notify the
9 sales manager that the customer left. They came
10 in for a re-sign.

11 Q Did you get written up for that?

12 A Yeah, that is what is in my hand.

13 Q Why is that wrong or why did you get
14 written up for it, if you know?

15 A Well it says I failed to notify a sales
16 manager when a customer is leaving.

17 Q Are you supposed to do that?

18 A If possible, yes. On this particular
19 deal, though, the sales manager was with another
20 customer and I couldn't get to him, and the
21 customer left in the meantime.

22 Q Joan Marino was the controller at Douglas
23 Jeep; correct?

24 A Yes, Joanne Marino.

25 Q Did Joanne Marino ever state that you

12044311045

1 berated her while you worked at Douglas Jeep?

2 A We had one argument, it was a disagreement
3 about a lease deal. I don't remember all the
4 details, but it had to do with her trying to pull
5 it into accounting and she wasn't able to get the
6 contract. I don't remember all the details, but
7 it had to do with her trying to pull the deal into
8 accounting and she wasn't able to do it. She
9 couldn't get the accounting to match the lease
10 contract.

11 Q Were you rude or did you yell at her?

12 A No. We had a disagreement over it. I was
13 trying to explain the lease to her. I didn't
14 understand accounting and she didn't understand
15 leasing. We got into a disagreement about it.
16 Was I rude to her, no? It was just a
17 disagreement. Normal disagreement you're going to
18 have with people over the course of doing 60 or 70
19 car deals a month, it happens.

20 Q Did you have the same or different type of
21 disagreement with Marie Nichols?

22 A No.

23 Q Was Marie Nichols the witness to your
24 disagreement with Ms. Marino?

25 A She was in the room, yes.

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1 Q How did Venice Dodge Nissan -- In
2 Paragraph 22 of your complaint it states that the
3 sales desk would forge signatures of the applicant
4 on the contract.

5 What contract did the sales department get
6 a customer to sign?

7 A Credit applications.

8 Q Well, it has credit applications. Let me
9 read the whole thing. "Sales desk would forge the
10 signature of the applicant on the contract, credit
11 applications, and alter other documents after they
12 had been signed by customers.

13 A So specifically contract?

14 Q Specifically contracts?

15 A Jeff Sutton.

16 Q Is Jeff Sutton the only instance that
17 you're aware of that a contract was forged by the
18 sales desk?

19 A Yes.

20 Q And who at the sales desk forged a
21 signature?

22 A I believe that Jason Martin directed
23 somebody upstairs in the office to do it on Jeff
24 Sutton's case.

25 Q And then it talks about and alter other

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1 documents after they had been signed by customers.

2 We talk about Sutton and we talk about
3 credit applications. What other documents were
4 altered after they had been signed by customers by
5 the sales desk?

6 A What other documents were altered, is that
7 the question?

8 Q Yes.

9 A Pay stubs, credit apps. Those are the two
10 primarily.

11 Q And just the one contract that you're
12 aware of?

13 A Yes.

14 Q And you said earlier that VIN numbers
15 were not given to the bank, but model numbers?

16 A Yes.

17 Q Do model numbers also show what
18 accessories are on vehicles, your high dollar
19 accessories?

20 A No.

21 Q It wouldn't show, for example, a
22 convertible?

23 A A convertible, yes; but that's not an
24 option. When I say option I'm talking about
25 things like sunroof, leather interior, different

12044311048

1 stereo systems, aluminum wheels. Those are adds
2 that are not going to be in the model number of
3 the car.

4 Q How did Venice Dodge Nissan breach your
5 pay plan?

6 A By not paying me on the entire amount of
7 the profit of a deal.

8 Q What do you mean by that?

9 A I mean the cost of the products that we
10 sold.

11 Q And which products? F&I products that
12 were sold?

13 A Yes.

14 Q Which F&I products are you talking about?

15 A Anything that there was a kickback to the
16 dealer, service agreements. Any policy that the
17 dealer got paid that the employees didn't.

18 Q And it leaves for a place of reference for
19 myself. Is that related to the conversation that
20 we had with regards to reinsurance companies?

21 A Yes.

22 Q Other than the issue of reinsurance
23 companies is there any other reason you believe
24 the dealership breached your pay plan?

25 A Yeah, charge backs.

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1 Q And what issues with regards to charge
2 backs are you referring to?

3 A I'm referring to charge backs that were
4 never documented that I would ask for time and
5 time again to show me an itemized list of the
6 charge backs that were never provided.

7 Q You on a monthly basis would collect,
8 would you not, get any information with regard to
9 charge backs?

10 A I would get a dollar amount on a piece of
11 paper. They would say these are your charge backs
12 for this month, and that's it.

13 Q Now, some of the charge backs for with
14 regards to JM&A, would that be times where people
15 would cancel service contracts?

16 A Within the first 90 days. You're not
17 charged back after 90 days.

18 Q So are those the charge backs?

19 A No, also bank statements.

20 Q Let's talk about JM&A for a second.

21 A Okay.

22 Q Are the charge backs that you're talking
23 about with regard to JM&A, service contracts that
24 would get canceled within 90 days?

25 A Am I what? Say that again; I'm sorry.

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1 Q Do they concern service contracts that
2 would be canceled in less than 90 days?

3 Let me ask it to you this way --

4 A Yeah, I'm sorry, I don't understand the
5 question.

6 Q With regard to JM&A products, service
7 contracts, when would there be a charge back?

8 A Within 90 days.

9 Q Within 90 days of what?

10 A Cancellation.

11 Q So if a consumer canceled a service
12 contract within 90 days there would be a charge
13 back; true?

14 A Yes.

15 Q And what would happen when they canceled
16 the service contract? The customer, would they
17 get money back?

18 A Yes, or it would go toward the balance of
19 their loan if they had a loan.

20 Q And would your department process those
21 cancellations?

22 A We did for a while and then they decided
23 to have the office girls handle cancellations.

24 Q Why did they do that?

25 A I don't know. Probably to hide them.

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1 Q Was it because you weren't getting the
2 refunds done to the customers in a timely manner?

3 A I didn't do refunds, they were done
4 upstairs.

5 Q Did you do the paperwork that would
6 provide for the refunds?

7 A Yes, for a while.

8 Q Was the change made because you were
9 failing to get your paperwork on these
10 cancellations finished in a timely manner?

11 A No, absolutely not.

12 Q When you were at Douglas Jeep did they
13 have an issue with regards to the cancellation of
14 service contracts?

15 A Yes, they decided to move them into the
16 office. They had been before, before I started
17 there. And then they moved them back into the
18 office.

19 Q Do you remember when an issue with regards
20 to service contract reimbursements not being made
21 hit the newspaper --

22 A There was one customer.

23 Q -- with regards to Douglas Jeep?

24 A There was one customer that complained
25 they did not get their refund fast enough.

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1 Q Was that a transaction that you worked on?

2 A I don't remember. I think so but I'm not
3 sure.

4 Q Was that an instance where you didn't in a
5 timely fashion get done a refund due a customer
6 regarding the cancellation of a service contract.

7 A Possibly. I don't remember all the
8 details, to be honest with you. There was a
9 breakdown in the system at some point.

10 Q If I understand your testimony correctly,
11 one of the things that Don Caldwell -- well, let
12 me ask it to you this way.

13 Would not Don Caldwell discuss with you
14 often your failure to get service contract
15 reimbursements done?

16 A If I didn't fail, then, no, he wouldn't.

17 Q I'm sorry; what?

18 A He wouldn't discuss failures with me if I
19 wasn't failing to do it.

20 Q So your testimony is you did it?

21 A Yes, I did cancellations as quickly as I
22 could. We all did. I wasn't the only one that
23 did cancellations. We did them as quickly as we
24 could.

25 Q Did you ever get verbally reprimanded for

12044311053

1 not getting those done?

2 A No.

3 Q Other than we talked about charge backs,
4 reinsurance, and specifically so far JM&A charge
5 backs, and I guess I have got to go back. With
6 regards to JM&A charge backs, how were you not
7 paid properly with regards to your pay plan?

8 A Because we weren't given the breakdowns of
9 what the charge backs were. I know for a fact
10 that JM&A specifically, because we had a website
11 we could go to that would show what the
12 cancellation amounts were and what the charge back
13 amounts were, and they never jived with the number
14 we were given from the office. We got a breakdown
15 for either warranty -- JM&A cancellation and bank
16 charge backs. We got two numbers. And the number
17 with JM&A would never jive with what was in the
18 computer, ever.

19 Q How far would be they off?

20 A Thousands of dollars.

21 Q Did you ever complain about this?

22 A Yes.

23 Q Did you ever complain in writing?

24 A No.

25 Q Did you ever complain to Mr. Buchanan?

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1 A No.

2 Q Did you ever complain to Mr. Tosch?

3 A No.

4 Q You do know you sued Mr. Buchanan; right?

5 A Yes.

6 Q Did you ever complain to anybody at

7 corporate?

8 A No.

9 Q Who did you complain to?

10 A Mostly Shelby.

11 Q Would you complain to Tina Hires?

12 A Would I complain? My interaction with her
13 as far as charge back goes would be to try to get
14 an accounting of the charge backs, a detailed
15 accounting.

16 Q And would this happen with Tina once a
17 month?

18 A No. After a few months I just stopped
19 asking because I knew that I was going to get the
20 runaround, I was going to get stonewalled.

21 Q When did you stop asking?

22 A I don't remember the exact date.

23 Q Do you remember the year?

24 A Probably '03 or '04.

25 Q So in either '03 or '04 you stopped asking

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1 for a breakdown of charge backs?

2 A They wouldn't give them to me. I asked
3 for months and months and months and never got
4 them.

5 Q So in approximately 2004 is that when you
6 stopped asking?

7 A '04, '05, I don't remember the exact date.
8 Probably '04, '05. I don't remember.

9 Q To be fair, we were talking about charge
10 backs for JM&A.

11 A No, all charge backs.

12 Q Well, I was. So I was going to ask you,
13 was the same answer true for bank charge backs?

14 A Yes.

15 Q Okay. And what about bank charge backs do
16 you think was not accounted for correctly?

17 A None of it was accounted for. I never got
18 detailed breakdowns.

19 Q Okay. Let me ask it a different way.

20 Do you believe that the charge backs
21 weren't properly accounted for by the dealership
22 with regards to bank charge backs?

23 A Yes.

24 Q What do you ways that on?

25 A Not giving me detailed a accounting.

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1 Q Do you base it on anything else?

2 A If they were accounting correctly and the
3 charge backs were correct, they would have had no
4 problem or reason to give me accounting, detailed
5 accounting.

6 Q Other than the fact that you weren't given
7 detailed accounting, what makes you think that
8 charge backs weren't accounted for correctly in
9 your pay plan? Or is that the only reason, which
10 is fine?

11 A That's not the only reason. Again, with
12 regard to JM&A, I knew what the charge backs
13 should have been every month because it was right
14 on their website. They gave a detailed breakdown
15 of the dollar amounts. And that would never jive
16 with what I was given from the dealer.

17 Q And what was that website?

18 A I don't remember what it was. It's a JM&A
19 Connect. I don't remember what the website is.

20 Q You had a PIN number or code number to
21 access that?

22 A Yes.

23 Q Nobody ever denied you that code?

24 A No.

25 Q So nobody ever tried to hide that screen

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1 from you or that information?

2 A No, they tried to hide everything else.

3 Q What is everything else?

4 A Come on, you know what everything else is.

5 Q No, I don't.

6 A It's the detailed accounting of the charge
7 backs. We're going around in circles.

8 Q I'm trying to get an idea of what you
9 think you were supposed to get because you filed a
10 lawsuit for an accounting --

11 A And I told you.

12 Q -- and a breach of pay plan.

13 A And I told you.

14 Q Okay. So I need to know when you stopped
15 asking, which I thought was 2004, which now may be
16 2005?

17 A I don't remember the specific date. It
18 was either '04 or '55.

19 Q And I need to know, because you want an
20 accounting, specifically what it is you think you
21 didn't get and what you should get in order to be
22 able to compute what you think you were owed?

23 A A detailed accounting of the charge backs
24 with bank statements and JM&A statements.

25 Q Were you ever given detail or were you

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1 always just given a number from the date of your
2 employment?

3 A It was a number.

4 Q Always a number?

5 A Yeah. Again, when I first started asking
6 for them when I first started having suspicions,
7 they would give me, I don't even know what they
8 were. They were -- I don't even know what they
9 were called. It was just nonsense, gibberish.
10 They made absolutely no sense.

11 Q Did this gibberish or nonsense come from
12 Tina Hires?

13 A Yes. And I told her I didn't understand
14 it and I asked her for detailed accounting in
15 layman's terms, and she wouldn't give it to me.

16 Q What did she give you? Was it more than
17 just a number, like you told us?

18 A When? At what point?

19 Q Any point.

20 Let me rephrase. At some point in the
21 history of your employment at Venice Dodge Nissan
22 did you ever get from Tina Hires information with
23 regards to charge backs that wasn't just a number?

24 A For a couple of months.

25 Q And what information did you get?

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1 A Again, they were just adds and deductions.
2 I don't know what it was. It made no sense.

3 Q Were there words or just numbers on the
4 page?

5 A Both.

6 Q Okay. What were the words?

7 A Customers' names with numbers attached to
8 them.

9 Q What were the numbers about?

10 A Finance reserve, I think, I guess. I
11 really don't know.

12 Q So at some point, whenever, did Ms. Hires
13 give you a document that had charge backs with
14 numbers next to customer names?

15 A No, they weren't charge backs. If they
16 were charge backs I would have understood them.
17 It was adds and deductions. They made absolutely
18 no sense.

19 Q And it's your testimony that they were not
20 charge back numbers?

21 A Correct. I don't know what the hell they
22 were.

23 Q And it's your testimony that Tina Hires
24 never gave you information with regards to the
25 breakdown of charge backs?

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1 A Yes.

2 Q That would go for JM&A charge backs; true?

3 A Yes.

4 Q That would go for bank charge backs;
5 correct?

6 A Yes.

7 Q Other than the issue of the charge backs
8 and the issue with regards to the reinsurance
9 company, are there any other ways you think your
10 pay plan wasn't honored?

11 A There is the question of borrowing money
12 from JM&A and how that was paid back.

13 Q And other than that have we exhausted all
14 the reasons that you believe your pay plan wasn't
15 honored?

16 A Yes.

17 Q Just to make sure I covered all the issues
18 in that regard, those three issues that we just
19 discussed, I guess I'll say it one more time, the
20 issue with regards to charge backs, the issues
21 with regards to reinsurance, and the issue about
22 some \$3million loan and how the payment worked on
23 that, is that the material that you would need to
24 see in a suit for accounting to see if you got
25 paid correctly?

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1 A I would need to see all the deals, yes.

2 Q You would need to see all the individual
3 deals --

4 A Uh-huh.

5 Q -- for every customer that has brought a
6 vehicle at Venice Dodge Nissan?

7 A While I was employed there.

8 Q Every deal?

9 A Yes.

10 Q And in your mind there is no other way to
11 do that than to look at every deal?

12 A Can you think of another way?

13 Q I'm not being deposed, but, yeah, probably
14 I could, but that's neither here nor there.

15 Is that the only way that you know?

16 A Yes.

17 Q And what would you do with every deal and
18 what would you be looking at?

19 A And I would also want to look at bank
20 statements and detailed charge backs because they
21 have to exist somewhere. They were never shown to
22 me but they have to be around somewhere.

23 Q What would it be that you would be looking
24 at in the deal jackets or deal files? I forget
25 which one you said.

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1 A Either one.

2 Q Do you know what I mean by deal jacket?

3 A Either one.

4 Q In order to see if you were paid correctly
5 on your pay plan?

6 A How everything was set up.

7 Q I don't know what how everything was set
8 up means.

9 A How the accounting was set up.

10 Q What document in the deal jacket would you
11 be looking at?

12 A The washout sheet. You compare the
13 washout sheet to the accounting. I'm not a
14 forensic accountant, so that's not something that
15 I personally would do.

16 Q I'm trying to get the benefit of your
17 knowledge.

18 A I'm not an accountant.

19 Q So at least with the benefit of your
20 knowledge, it's the washout sheet and the deal
21 jacket that is important to you; correct?

22 A I want to look at the whole deal.

23 Q Well, does the rainbow form or the title
24 work have anything to do with this?

25 A It goes to forging those signatures.

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1 Q What does that have to do with the breach
2 of your pay plan?

3 A The breach of the pay plan? Nothing. It
4 goes to other counts in my suit, though.

5 Q I am asking questions with regards to what
6 you have deemed a breach of your pay plan. I
7 asked you with regards to Count III of your suit
8 of accounting what you would need to see to
9 determine whether or not your pay plan was
10 breached; true?

11 A Accounting and the washout sheets.

12 Q Okay. What accounting?

13 A From the office. Statements, from the
14 office.

15 Q Statements about what?

16 A Monthly statements.

17 Q From whom?

18 A Detailed -- what do you mean from whom?

19 Q In the accounting --

20 A Venice Dodge Nissan.

21 Q If you'll work with me. In the accounting
22 department there are lots of accounts and there
23 are lots of statements. And they have accounts,
24 for instance, things that deal with service, okay.
25 And I need to know from you to the best of your

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1 knowledge what accounts from accounting would you
2 wish to see?

3 A The monthly statements showing the profit
4 for F&I and charge backs.

5 Q And the washout sheet?

6 A Yes.

7 Q Count IV is a count for unjust enrichment.
8 I'm assuming, but I want to make sure, does that
9 all, to the best of your knowledge, stem from the
10 breach of pay plan?

11 A Yes.

12 Q The three things we talked about?

13 A Yes.

14 Q Okay. Did you, to the best of -- let me
15 ask you this: You had a pay plan agreement?

16 A I had several pay plan agreements, it was
17 changed three or four times.

18 Q Were these written agreements?

19 A Yes.

20 Q And were they with Venice Dodge Nissan?

21 A Yes.

22 Q Did you ever have a pay plan agreement
23 individually with Mr. Buchanan?

24 A No, but he owns 51 percent of the store,
25 so I would imagine he would be responsible for it

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1 as well.

2 Q But the answer is no; correct?

3 A No, the answer is what I just answered.

4 Q Did you have a personal individual pay
5 plan with Shelby Curtsinger?

6 A I had an individual pay plan with the
7 dealership that was constructed by Shelby
8 Curtsinger, Don Caldwell, and Vern Buchanan.

9 Q Did you have a personal individual pay
10 plan --

11 A I don't know what that means, personal
12 individual pay plan. What does that mean?

13 Q Well, did you not enter into an agreement
14 on a pay plan with Venice Dodge Nissan?

15 A Yes.

16 Q And is that not because you worked
17 specifically for Venice Dodge Nissan?

18 A Yes.

19 Q You didn't have a second or distinct pay
20 plan with Shelby Curtsinger; did you?

21 A No, I had a pay plan with Venice Dodge
22 Nissan. What does that mean?

23 Q It means that you sued these people
24 individually and I have to make sure and
25 understand why.

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1 A They're the partners of Venice Dodge
2 Nissan.

3 Q Did you have a separate and distinct pay
4 plan with Don Caldwell?

5 A I don't know what that means. I had a pay
6 plan with Venice Dodge Nissan. The partners, the
7 owners of Venice Dodge Nissan are Shelby
8 Curtsinger, Don Caldwell, and Vern Buchanan.

9 Q And it's --

10 A That's the answer to your question, again.

11 Q And it's because of the mere ownership --

12 A Mere ownership?

13 Q -- that you are suing the individuals
14 under the pay plan?

15 A I don't know what that means. I don't
16 understand what you're asking me. My agreement
17 was with Venice Dodge Nissan. The people that own
18 Venice Dodge Nissan are Shelby Curtsinger, Don
19 Caldwell, and Vern Buchanan. That's the answer to
20 your question.

21 Q Did you have separate and distinct
22 agreements with those individuals?

23 A I don't know what that means.

24 Q Do you know of any written document that
25 you claim to be owed money from these defendants

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1 other than pay plans from Venice Dodge Nissan?

2 A Again, my pay plan was with Venice Dodge
3 Nissan. The three people that own Venice Dodge
4 Nissan are Vern Buchanan, Shelby Curtsinger and
5 Don Caldwell. How many different ways are you
6 going to ask me the same question? My pay plan
7 was with the dealership. The people that owned
8 the dealership are the three people that own the
9 dealership.

10 MR. ORNSTEIN: Can you read that
11 back.

12 [Record read as requested.]

13 BY MR. ORNSTEIN:

14 Q You then have an account for negligent
15 supervision. You said the Plaintiff demands
16 judgment against all Defendants.

17 Are you suing Vern Buchanan for negligent
18 supervision?

19 A No. As far as -- well, yes. Actually, I
20 am, because he's one of my supervisors.

21 Q How many times -- well, I asked you, you
22 never had any interaction with regards to Vern
23 Buchanan regarding business; correct?

24 A He owns 51 percent of their store. He was
25 one of my supervisors, one of three.

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1 Q Can you read him back the question.

2 [Record read as requested.]

3 A I heard the question and that's my answer.

4 MR. ORNSTEIN: Can you read him back
5 the question.

6 [Record read as requested.]

7 A That's my answer.

8 Q Did you ever have conversations with a
9 Mr. Buchanan with regards to business?

10 A I had conversations with Mr. Buchanan two
11 or three times. Did we talk about business at the
12 dealership? Yeah, probably.

13 Q Do you recall having conversations with
14 Mr. Buchanan at the dealership?

15 A Yes.

16 Q And that was two or three times in six
17 years?

18 A Yes, in five-and-a-half years.

19 Q In five-and-a-half years.

20 Other than Mr. Buchanan having a
21 51 percent interest -- actually, do you know if
22 Mr. Buchanan personally has a 51 percent interest?

23 A Yes.

24 Q Do you?

25 A That's what I was told.

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1 Q Other than your allegation that
2 Mr. Buchanan had a 51 percent interest, what other
3 things did he do that makes you think he was your
4 supervisor?

5 A He owns 51 percent of the store, that's
6 why he's my supervisor?

7 Q Other than --

8 A Employees answer to owners of a business.
9 If somebody owns 51 percent of the business,
10 that's my supervisor.

11 Q I'm sorry you're getting a little upset,
12 sir.

13 A I'm not getting upset. You keep asking me
14 the same questions. I am not upset, I'm fine. I
15 hope you're not getting upset.

16 Q I never get upset.

17 A Good. Carry on.

18 Q Other than his having 51 percent
19 ownership, what other facts do you have that he
20 was your supervisor? If it's the fact that it was
21 merely the ownership, then say there is nothing
22 else.

23 A It's the ownership.

24 Q And that's it; correct?

25 A Yes.

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1 Q Who else is guilty of negligent
2 supervision?

3 A Shelby Curtsinger and Don Caldwell.

4 Q And Shelby Curtsinger is guilty of
5 negligently supervising who?

6 A Don Caldwell.

7 Q And Don Caldwell is guilty of negligently
8 supervising who?

9 A Me.

10 Q The negligent supervision in the complaint
11 states that Defendants were responsible for
12 assuring compliance with federal and Florida law.

13 Was Mr. Caldwell negligent in supervising
14 you in making sure that you complied with federal
15 and Florida law?

16 A He was negligent because I went to him I
17 don't know how many times to tell him about things
18 that went on at that dealership and he did nothing
19 about it. He condoned it and encouraged it.

20 Q Was Don Caldwell there the five-and-a-half
21 years that you were there?

22 A Yes, six days a week.

23 Q And you bring a case for tortious
24 interference.

25 Do you know what is meant by that?

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1 A Not exactly, no. As I understand tortious
2 interference, it applies to -- how do I explain
3 this? -- supervisors interfering with their
4 employees doing business in an ethical way and
5 benefitting from it. That's my understanding of
6 it in layman's terms.

7 Q Do you know, to the best of your
8 knowledge, did Mr. Buchanan personally interfere
9 with your job at Venice Dodge Nissan?

10 A Yes, I believe he did.

11 Q And what actions did he take that
12 personally interfered with your job?

13 A Not doing anything about the things that
14 went on there.

15 Q The things that you did not tell him;
16 true?

17 A Somebody told him. He knew.

18 Q Do you know he knew?

19 A I think he knew, yes. I suspect very
20 strongly that he knew.

21 Q And what facts do you rely upon
22 specifically?

23 A Specific facts, I don't have specific
24 facts to rely on.

25 Q None?

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1 A No. If somebody owns 51 percent of a
2 store of any business, they know what is going on
3 in the business.

4 Q Do you have a point of reference with
5 that? Have you ever owned 51 percent of a
6 dealership?

7 A It's common sense. If you own a majority
8 interest in a business, you know what is going on
9 in the business; don't you?

10 Q Have you ever owned 51 percent of a
11 business?

12 A No.

13 Q Do you know how many businesses
14 Mr. Buchanan owns?

15 A No, nor do I care.

16 Q Do you know if Mr. Buchanan lied about
17 your performance to get the dealership to take
18 negative action regarding you?

19 A I know that in Mr. Buchanan's deposition
20 he said that he was told that I was written up
21 twice for conducting illegal activities and
22 participating in them and that I was eventually
23 fired for it; which as we know is incorrect.

24 Did he lie? I don't know if he lied.
25 Maybe he was given bad information.

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1 MR. ORNSTEIN: Could you read back
2 the question.

3 [Record read as requested.]

4 A That's my answer.

5 BY MR. ORNSTEIN:

6 Q Other than what you heard him testify to
7 in his deposition, whatever that might be, are you
8 aware of any information?

9 A No, I heard it directly from him. He
10 stated that I was written up twice for conducting
11 illegal activities and that I was fired for it.
12 Was he mistaken? Did he lie? I don't know.
13 Maybe he was given bad information, who knows,
14 because I wasn't written up twice and I wasn't
15 fired.

16 MR. ORNSTEIN: I need just a second.

17 [Brief recess was taken.]

18 BY MR. ORNSTEIN:

19 Q I'll try to take a shot at asking one
20 question. And let me explain to you why. In the
21 tortious interference count only one paragraph
22 mentions Mr. Buchanan and it's in a very broad
23 way. And as hard as it may be to deal with, each
24 Defendant is different and they each get treated
25 different. And my job is to figure out what your

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1 complaint is about each Defendant.

2 A Your job is to protect your clients and
3 separate them. They can't be separated. All
4 three of them own Venice Dodge Nissan. They're
5 linked together. They're all involved in the same
6 corporation.

7 Q Are all of your allegations with regard to
8 Mr. Buchanan, do they all stem from the fact that
9 he owns 51 percent of the corporation?

10 A Yeah, that he's a partner of the
11 dealership and he's a supervisor in the
12 dealership.

13 Q You say he's a supervisor in the
14 dealership because he owns 51 percent of the
15 corporation?

16 A He does, or a corporation that he owns.

17 Q Sure. Oh, I get that.

18 A Do you?

19 Q It all stems from a 51 percent ownership
20 either actual or beneficial?

21 A Whether it's 51 percent or whatever the
22 number is, he's a partner in the store.

23 Q Does all your allegations with regards to
24 Mr. Buchanan stem from having an ownership
25 interest in the dealership?

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1 A Yes.

2 Q Whether it be actual or beneficial?

3 A Yes.

4 Q Thank you.

5 What actions did Shelby Curtsinger take
6 when acting in his own interest that were at odds
7 with the legitimate interests of 1099, which is
8 Venice Dodge Nissan?

9 A What actions did he take, is that your
10 question?

11 Q Yes, sir.

12 A I think it was more what actions he didn't
13 take.

14 Q And what were those?

15 A Not acting upon the knowledge that things
16 were going on at that dealership and relying on
17 Don Caldwell to handle them.

18 Q Anything else?

19 A No.

20 MR. ORNSTEIN: Okay. Doug, it's
21 4:30.

22 MR. LYONS: Actually 4:22, so you got
23 another eight minutes, go ahead and use
24 it. How much longer do you think you're
25 going to need when we reconvene?

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1 MR. ORNSTEIN: About three-and-a-half
2 to four hours.

3 MR. LYONS: Go ahead and use the next
4 eight minutes, we got it, we might as well
5 use it.

6 MR. ORNSTEIN: I'm going to get going
7 now. I have to change subject matter.
8 The eight minutes are not going to make a
9 difference to you, but they make a
10 difference to my son and I'm here on a
11 Saturday at the request of Mr. Bell,
12 which, by the way, when we do it again
13 Saturdays are okay, Sunday might be
14 better, or a real crappy Florida game.

15 THE WITNESS: I could do either one
16 of them. Thank you for the accommodation.

17 COURT REPORTER: Reading and signing?

18 MR. LYONS: Well, we're not done yet.

19 MR. ORNSTEIN: I may actually print
20 it, I may order it.

21 MR. LYONS: He wants to read, I want
22 him to read.

23 COURT REPORTER: Are you ordering the
24 transcript?

25 MR. LYONS: I'm not ordering a copy

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1 of the transcript.

2 MR. ORNSTEIN: Yes.

3 MR. LYONS: Carlo, I want to make
4 sure you get a chance to read it to make
5 sure everything is taken down accurately.
6 You can't change your answer. You can't
7 say I wish to answer differently. That's
8 not the purpose. The reading and signing
9 is to make sure everything was taken down
10 accurately. As good as court reporters
11 are, they're not perfect.

12 I want you to read it, study it, and
13 make sure everything is accurate. And
14 then you'll have a provision, you'll have
15 what is called an errata sheet, a whole
16 page for you to put down page number and
17 line number of any changes and the words
18 that need to be changed; okay?

19 THE WITNESS: Okay.

20 MR. LYONS: So when you have some
21 time, it will take you probably, I would
22 leave yourself, two, three, four hours to
23 go through it and make sure you catch
24 everything. Not something you want to
25 rush through because accuracy is the most

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1 important thing. So just arrange with her
2 at a mutually convenient time to come in
3 and read it and make any changes on the
4 errata sheet and sign it. Okay?

5 THE WITNESS: Okay.

6 (The taking of this deposition was
7 concluded at 4:22 p.m.)
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WITNESS: CARLO BELL **TAKEN:** 08/15/09
CASE REEERENCE: BELL v. BUCHANAN, et al.

Please sign and date this sheet as indicated below. If additional lines are required for corrections, attach additional sheets. If there are no corrections, please indicate "None."

[illegible]

WITNESS

ESQUIRE DEPOSITION SOLUTIONS
101 East Kennedy Boulevard, Suite 3350
Tampa, Florida 33602
(813)221-2535

August 18, 2009

Mr. Carlo Bell
4031 Red Bird Circle North
Sarasota, Florida 34231

Re: Bell v. Buchanan
Esquire Job No. 116559Bell.Carlo081509

Please take notice that on the 15th day of August, 2009, your deposition was taken in the above-referenced matter. At that time you did not waive signature.

A courtesy copy of the transcript is enclosed for your review.

Any corrections you wish to make to the transcript should be made on the errata sheet at Page 210. Please do not write on the transcript itself.

Please complete review of your transcript within a reasonable time and return the errata sheet to our offices. You need not return the entire transcript.

If you now wish to waive your right to read and sign the transcript, please indicate so on the errata sheet and return it to our office.

Sincerely,

Gerrilynn Mehl, RPR

CC via transcript:
Mark L. Ornstein, Esquire

12044311081

1 CERTIFICATE OF OATH

2 STATE OF FLORIDA)

3 COUNTY OF PINELLAS)
4
5

6 I, the undersigned authority,
7 certify that CARLO BELL personally appeared before
8 me and was duly sworn on the 15th of August, 2009.
9

10 WITNESS my hand and official seal
11 this 18th of August, 2009.
12
13
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15

16 -----
16 GERRILYNN MEHL, RPR
17 Notary Public - State of Florida
17 My Commission No. DD 328362
18 Expires: June 16, 2012
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C E R T I F I C A T E

The State of Florida)

County of Pinellas)

I, Gerrilynn Mehl, Registered professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the aforementioned witness was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of August, 2009.

Gerrilynn Mehl, RPR

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